

Exhibit J

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)
8 HOLDINGS, INC., et al, (Jointly Administered)
9 Debtors.

10 -----x

11
12 DEPOSITION OF EDWARD J. ROSEN

13 New York, New York

14 February 19, 2010

15
16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

18 JOB NO. 28461
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25

1 ROSEN
2 (Exhibit 622, declaration of Edward J.
3 Rosen marked for identification, as of this
4 date.)
5 EDWARD J. ROSEN,
6 called as a witness by the parties,
7 having been duly sworn, testified as follows:
8 EXAMINATION BY
9 MR. MAGUIRE:
10 Q. As you know, my name is Bill Maguire
11 with Hughes, Hubbard & Reed. I am here with my
12 colleague Amina Hassan. We represent James
13 Giddens, the SIPA trustee.
14 We are going to ask you some
15 questions. If any questions are unclear, let me
16 know. If you need to take a break at any time,
17 just let me know.
18 I will show you a document we have
19 marked as Exhibit 622. If you can tell me what
20 that document is, sir.
21 A. It looks like my declaration, pursuant
22 to Rule 30(b)(6).
23 Q. You have mentioned in the second
24 paragraph that you specialize in derivatives.
25 Do you see that?
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1 ROSEN
2 A. Yes.
3 Q. Can you tell me what -- the
4 derivatives that Barclays acquired in the
5 transaction that's the subject of this, did that
6 include any futures contracts?
7 MR. MORAG: Object to the form.
8 A. It did, it did include the acquisition
9 of the futures business.
10 Q. And did that futures business include
11 any positions?
12 A. I don't know. I don't know what
13 positions were actually on. We didn't handle
14 the futures side of the arrangements. Those
15 were handled by S&C, by and large.
16 Q. Did you have an understanding whether
17 any futures contracts were included in the
18 acquisition by Barclays?
19 MR. MORAG: Object to the form.
20 A. Yes. I believe, my understanding was
21 that there were futures positions and listed
22 options positions.
23 Q. And what kinds of futures and options
24 contracts did you understand Barclays to be
25 acquiring in this transaction?
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1 ROSEN
2 A. I'm not sure I understand the
3 question, what type of futures options.
4 Q. Were they exchange-traded or over the
5 counter?
6 A. Yes, yes, listed. Not over the
7 counter. My understanding was the
8 over-the-counter business was excluded.
9 Q. Did you have an understanding how
10 Lehman organized its derivatives business?
11 A. No.
12 Q. When did you become involved in the
13 transaction?
14 A. My recollection was sometime around
15 the 15th of September, maybe the 14th of
16 September.
17 Q. And what was your role?
18 MR. MORAG: Time frame? At the start?
19 Q. Starting on the 15th.
20 A. On the 15th, going forward, I was both
21 dealing with certain of the deal issues relating
22 to the regulated character of the transaction,
23 and also dealing with certain regulators on
24 issues that needed to be addressed if the deal
25 was going to be closed.
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1 ROSEN
2 That's primarily what I was doing, but
3 also the clearinghouse issues that arose and the
4 JP Morgan issues that arose, I had some
5 involvement in, as events unfolded between then
6 and the 22nd.
7 Q. When you say the clearinghouse, are
8 you referring to DTCC?
9 A. And OCC.
10 Q. What regulators did you deal with?
11 A. I spoke with the SEC. I did have one
12 or two conversations with staff at FINRA, and I
13 had a couple of conversations with folks at the
14 Federal Reserve.
15 Q. With whom did you deal at the SEC?
16 A. I had conversations with Mike
17 Macchiaroli, Randall Roy, and Dan Gallagher.
18 Q. What were the subject of your
19 conversations with Mike Macchiaroli?
20 A. There were a couple of issues. The
21 principal issue related to the fact that Lehman
22 operated under a different -- was registered
23 under a different broker dealer regulatory
24 regime with different capital requirements than
25 Barclays, and there were questions about how
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<p>1 ROSEN</p> <p>2 A. Talking about the 30(b)(6) issues and</p> <p>3 discussing our recollection of them.</p> <p>4 Q. Can you tell me when that happened?</p> <p>5 MR. HUME: I am just going to object,</p> <p>6 because I think the record is unclear</p> <p>7 whether your question is about recollections</p> <p>8 reflected in the affidavit versus 30(b)(6)</p> <p>9 prep.</p> <p>10 Q. Did you distinguish between preparing,</p> <p>11 getting your recollections for your declaration</p> <p>12 and your recollections for your deposition, or</p> <p>13 was that all part of the same process where you</p> <p>14 were preparing to testify either by way of</p> <p>15 declaration or by way of deposition?</p> <p>16 A. Well, obviously the discussions were</p> <p>17 held earlier with respect to the declaration,</p> <p>18 sometime during the week leading up to the</p> <p>19 completion of the declaration. I don't recall</p> <p>20 whether Duane McLaughlin or Dana Fleischman</p> <p>21 participated in those earlier discussions.</p> <p>22 Q. They did, however, participate in</p> <p>23 another round of similar discussions --</p> <p>24 A. After the declaration.</p> <p>25 Q. -- after the declaration.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 And when was that? Was that just in</p> <p>3 the last week?</p> <p>4 A. The week before, primarily. And</p> <p>5 yesterday, but only a small subset.</p> <p>6 Q. And how did you actually get the</p> <p>7 recollection from the partners? How did you</p> <p>8 find out what they remembered?</p> <p>9 A. I'm not quite sure I understand the</p> <p>10 question. We talked amongst ourselves about the</p> <p>11 events and our recollections of them covered by</p> <p>12 the 30(b)(6).</p> <p>13 Q. Did any of your partners remember</p> <p>14 things that you did not remember?</p> <p>15 A. I would say yes, we all had different</p> <p>16 recollections.</p> <p>17 Q. Now, you note in your declaration,</p> <p>18 paragraph 3, you say, "Where indicated, the</p> <p>19 recollection of my partners." Do you see that?</p> <p>20 It's on the second line of paragraph 3.</p> <p>21 A. Um-hm. I do see that.</p> <p>22 Q. Is there any recollection that any of</p> <p>23 your partners gave you that you did not set</p> <p>24 forth in this declaration?</p> <p>25 MR. MORAG: Objection to form and</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 objection on the attorney/client privilege</p> <p>3 and work product.</p> <p>4 MR. MAGUIRE: Are you objecting or</p> <p>5 directing the witness not to answer?</p> <p>6 MR. MORAG: If I understand your</p> <p>7 question correctly, I'm directing him not to</p> <p>8 answer.</p> <p>9 Q. In paragraph 4, sir, you refer to the</p> <p>10 removal of certain language. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And you note specifically the draft</p> <p>13 that it was removed from.</p> <p>14 A. I am sorry.</p> <p>15 Q. You refer to language -- you refer to</p> <p>16 a draft that contained that language?</p> <p>17 A. Yes.</p> <p>18 Q. And the draft language that you are</p> <p>19 referring to, you set that forth in paragraph 5;</p> <p>20 is that correct?</p> <p>21 A. I am sorry, in paragraph 4, I don't</p> <p>22 see a reference to paragraph 5.</p> <p>23 Q. That's correct. In paragraph 4, you</p> <p>24 refer to the removal of certain language.</p> <p>25 A. Yes. I am sorry. You are referring</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 to paragraph 5 of the declaration, not</p> <p>3 paragraph -- OK, could you repeat the question.</p> <p>4 Q. I just want to make sure we are on the</p> <p>5 same page here. You're -- when you talk about</p> <p>6 the certain language in paragraph 4, you are</p> <p>7 referring to the language that you set forth in</p> <p>8 quotes in paragraph 5 of your declaration?</p> <p>9 A. Yes. This is a reference to the</p> <p>10 language in 1D.</p> <p>11 MR. MORAG: Let me note for the record</p> <p>12 that the quoted language in paragraph 5 does</p> <p>13 have ellipses and was not intended to be a</p> <p>14 full quote.</p> <p>15 Q. As a matter of reference, we are</p> <p>16 talking about the same language?</p> <p>17 A. Yes.</p> <p>18 Q. At the end of paragraph 4, you say</p> <p>19 that the trustee's position is incorrect, and</p> <p>20 you say, "There was to my or my partners'</p> <p>21 knowledge never any such agreement or</p> <p>22 discussion." Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Sir, was there any discussion, to your</p> <p>25 knowledge, or to the knowledge of your partners,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

with anyone, about the removal of the language that you discuss in paragraphs 4 and 5 of your declaration?

MR. MORAG: Object to the form, and to the extent -- you can answer to the extent you're going to talk about discussion with anyone in the Lehman side.

THE WITNESS: Yeah, I know, it's fine.

A. The only -- I -- the answer is, I don't recall the specific content of the discussion. But in response to that language, there was -- there was additional language that we drafted that was provided and identified to Lehman's attorneys explaining that this language was needed in light of the changes that had been made to 1D.

Q. And is that, sir, your recollection or the recollection of one of your partners?

A. Well, we gave -- it is our collective recollection that we drafted the additional language, and it was our recollection that we provided that in the form of a handwritten markup, and I don't recall, and I'm not sure any of my partners specifically recall, who actually

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handed the markup over to the Lehman side, but it was provided to the Lehman side in the form of handwritten comments.

Q. And the handwritten comments, are those the ones that included the parenthetical "property held to secure"?

A. Yes, yes.

Q. Have you seen those handwritten comments?

MR. MORAG: Time frame?

Q. At any time?

A. You mean including at the time that they were drafted?

Q. Yes.

A. The recollection of the group was that I drafted them.

Q. Do you recall actually what you did with those handwritten notes?

A. I would have given them to one of my partners.

Q. Have you seen them since the weekend when those notes were prepared?

A. No, no, I have not.

Q. Do you know whether they exist today?

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A. I don't know.

Q. Do you know whether, in fact, you did give them to somebody or what you did with those handwritten notes?

A. My recollection is that I handed them to one of my partners.

Q. Do you know which partner you handed them to?

A. I don't recall specifically.

Q. Do you have a general recollection?

A. I have a general recollection, it would have been Bob Davis or Duane McLaughlin or David Leinwand. It would have been one of those three.

Q. Have you asked your partners for that draft?

A. No, I haven't.

Q. Do you know whether anyone has attempted to locate that draft?

A. I don't know.

Q. Did you talk to anyone on the Lehman side concerning the insertion of the parenthetical that you were proposing in that draft?

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A. Did I personally speak to anyone on the Lehman side? Well, it depends upon -- I am sorry, I personally did not speak to anyone on the Lehman side.

Q. Do you know whether any of your partners spoke to anyone on the Lehman side about including that parenthetical in the clarification letter?

A. Our understanding, our recollection, Cleary's recollection, is that it would have been -- it would have been identified as a change to be made to the agreement, to the -- whoever the lawyer was on the -- representing Lehman that was handling the document.

Q. And do you know who the lawyer on the Lehman side was to whom it was handed?

A. I don't know. I don't know.

Q. And the draft that was handed to that Lehman lawyer, did it have any other handwritten changes?

A. I'm trying to remember. There were two other changes that I recall, and you will have to forgive me for being a little bit unclear about the timing or the sequencing, but

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<p>1 ROSEN</p> <p>2 I believe there were two other changes.</p> <p>3 One, there was language -- let me back</p> <p>4 up and ask you this question and get</p> <p>5 clarification. Are you asking me just about the</p> <p>6 language that's described in 1D, or are you</p> <p>7 asking about other changes to the clarification</p> <p>8 letter?</p> <p>9 Q. Let's get our time frame and context</p> <p>10 together first. I'm talking to you specifically</p> <p>11 about the draft that I understand from your</p> <p>12 testimony in which you, in handwriting, inserted</p> <p>13 the parenthetical that includes the words "and</p> <p>14 property held to secure."</p> <p>15 A. Yes.</p> <p>16 Q. And the question is whether that draft</p> <p>17 included any other proposed changes.</p> <p>18 A. I'd have to go back and look at the</p> <p>19 sequence of the drafts. There were two other</p> <p>20 changes that may or may not have been</p> <p>21 simultaneous. I don't know. They may have been</p> <p>22 given sequentially but have been processed by</p> <p>23 the other side as part of one turn. I don't, I</p> <p>24 don't recall.</p> <p>25 But there was a change in the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 clarification of language concerning 15c3-3,</p> <p>3 provision to add the word "or value" at the end</p> <p>4 of a sentence, and there was a sentence to</p> <p>5 clarify what had been agreed as part of the</p> <p>6 resolution of issues with DTC, that the</p> <p>7 liabilities to DTC associated with Lehman were</p> <p>8 excluded liabilities under the APA.</p> <p>9 Q. I am going to ask you again</p> <p>10 specifically about the draft in which you</p> <p>11 inserted that parenthetical "property held to</p> <p>12 secure."</p> <p>13 With respect to that draft, can you</p> <p>14 tell me what, if anything, was said about anyone</p> <p>15 on the Barclays side or the Cleary side to the</p> <p>16 person on the Lehman side who received that</p> <p>17 draft?</p> <p>18 A. No, I can't give you verbatim what</p> <p>19 would have been said, but what would ordinarily</p> <p>20 happen in that circumstance is that the changes</p> <p>21 would be identified to the other side so they</p> <p>22 could understand what was being provided to</p> <p>23 them.</p> <p>24 Q. And when you say the changes would be</p> <p>25 identified, the other side would be shown what</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 the proposed language was?</p> <p>3 A. Yes. We did not control the</p> <p>4 documents, so Cleary did not input those</p> <p>5 changes. Those changes were put into whatever</p> <p>6 revised draft emerged in whatever time it</p> <p>7 emerged by the Lehman's counsel.</p> <p>8 Q. Other than pointing out the changed</p> <p>9 language, do you know what, if anything, was</p> <p>10 said to Lehman about the addition of that</p> <p>11 parenthetical?</p> <p>12 A. No. Not at that time.</p> <p>13 Q. When you say not at that time, is</p> <p>14 there some other time that there was a</p> <p>15 discussion --</p> <p>16 A. Not about that specific parenthetical</p> <p>17 but about the subject, there were a lot of --</p> <p>18 there were exchanges of a number of</p> <p>19 communications and documents that I think were</p> <p>20 addressed to the same issue that were exchanged.</p> <p>21 Q. I would like to go through some of</p> <p>22 them, and the first one I'd like to take is the</p> <p>23 one that you refer to in paragraph 4. And</p> <p>24 that's the draft language that you have put</p> <p>25 forth in quotes in paragraph 5.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 And if we get our sequence right,</p> <p>3 there was a draft that included this language</p> <p>4 which has an express reference to margin, and</p> <p>5 that's the language you have set forth in</p> <p>6 paragraph 5, right?</p> <p>7 A. I am sorry, could you repeat the</p> <p>8 question about this language.</p> <p>9 Q. Yes. Let's get our context right</p> <p>10 first.</p> <p>11 I invite you to look at paragraph 5</p> <p>12 and look at the draft language that you have,</p> <p>13 starting with the quotes, "any and all</p> <p>14 property."</p> <p>15 A. I am sorry, where are you in</p> <p>16 paragraph 5?</p> <p>17 Q. About midway down, the second full</p> <p>18 sentence: "The draft language accomplished this</p> <p>19 by making clear that the definition of excluded</p> <p>20 assets did not include 'any and all property,'"</p> <p>21 and it continues.</p> <p>22 A. Correct.</p> <p>23 Q. So for my next couple of questions, I</p> <p>24 am going to be asking you specifically about</p> <p>25 that language and the draft in which that</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

ROSEN

language was deleted or crossed out. Are you with me?

A. Yes.

Q. Did you see the draft in which that language was crossed out?

MR. MORAG: Object to the form. I also object to the representation that all of the language was crossed out. If you want to show him the actual draft, it may be more appropriate.

A. I saw a draft which included a number of changes in which language was moved to other sections and modifications were made, and those modifications included modifications to this language. Yes, I did.

Q. And you refer to this as the removal of certain language in paragraph 4?

A. Well, I would -- without mincing words, I would say that there was a draft prepared that dealt with some of these issues in other ways, in other provisions of the agreement.

Q. Did you see the draft in which the language you quote in paragraph 5 was removed?

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ROSEN

A. Yes. Well, subject to the caveat as to what you mean by remove.

Q. What I mean by removed is the language that you quote was deleted, it was marked as deleted?

MR. MORAG: Object to the form.

Q. Did you see such a draft?

A. I saw a draft in which this language did not appear in this form.

Q. Did this language appear in any other form in that draft?

A. Some of it did and obviously some of it didn't.

Q. And what part of it did not?

A. I'd have to -- I would have to look at the particular draft of the agreement to answer that question. I can't recall with accurate -- with accuracy what the other changes were that were made at the same time as this change was made.

Q. Once you saw that draft, did you personally have any discussions with anyone on the Lehman side concerning the removal of any of this language?

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ROSEN

A. As I said earlier, we prepared language, I prepared language, and that language was provided to Lehman, and they would have identified to Lehman that this language was now necessary.

Q. Yes. And I understand that testimony. I was just asking whether there was any other conversation that you recalled.

A. No, not that I was -- not that I am aware of.

Q. Are you aware of any discussion involving any of your partners and anyone on the Lehman side --

A. Actually, hang on just a second. Hang on just a second.

I need to see the clarification agreement in which this language appears, because this language deals with a number of issues that were in flux at the time, some of which were the subject of discussions.

There was language that addresses 15c3-3, as I said earlier, that also addressed the DTC situation which had changed. And so -- and there were conversations obviously among the

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parties about a number of issues that are addressed in this language.

But as I said, with respect specifically to the language that was added in response in section 1(a)(ii)(C), the conversation would have been in connection with the transmittal of that language to the Lehman side.

Q. And you don't recall any other communication with the Lehman side concerning the removal of this language beyond what you have told us?

MR. HUME: Object to the form.

MR. MORAG: Same objection.

A. I think the -- other than the language itself, other than the changes that were proffered by Cleary having received a revised draft and discussions that I suspect we are going to cover relating to 15c3-3, and the discussions relating to DTCC, there were no specific conversations that we had and none that we thought were necessary, because this was part of the deal.

Q. Did you have any discussions with

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anyone on the Lehman side concerning margin?

MR. MORAG: Time frame?

Q. Over the weekend prior to the closing?

MR. MORAG: Objection to the form.

Objection to the term "margin."

A. Well, there were conversations -- there were e-mail communications in which I was copied and Lehman's people were copied about what was going to happen to the margin at OCC. Not just the margin but the property associated with those accounts, yes, in which OCC said, consistent with the order in their -- what was then the draft TAA that they had prepared, was going to be transferred to Barclays.

Q. Any discussions about margin with anyone on the Lehman side other than in connection with the OCC?

MR. MORAG: Objection to the form.

A. There was an e-mail to me copying Lehman, I believe, about the transfer of a certain amount of margin -- I can't remember exactly what it was -- in which Lehman was copied. I think that e-mail was from Jim McDaniel. I think the trustee's representatives
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ROSEN

A. DTC and OCC.

Q. Do you recall any discussion concerning margin at DTCC?

A. Discussing margin at DTCC? Well, there were discussions about the DTC accounts and how they were going to be handled, and those accounts would have included both proprietary positions, customers' positions, positions that may have been margined, and so indirectly, all of those discussions with DTC potentially included discussions about margin, to the extent that that was relevant.

Q. Any express reference to margin? Margin coming up in any express way in any conversation with DTC that you remember?

A. Well, in the sense that to the extent that anything constituted margin that was in there and the discussions covered those accounts, yes. But I don't remember us specifically singling out margin as a topic.

Q. Do you recall any discussions about margin at any foreign exchanges or clearinghouses?

A. Again, I don't recall conversations
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were also copied on that.

Q. And that's in connection -- Mr. McDaniel represented the OCC?

A. The OCC.

Q. Yes.

Other than with respect to the OCC, any discussions that you had concerning margin?

A. Well, verbal discussions?

Q. Yes.

A. I believe that there were conference calls about the clearinghouses. I think they may have been scheduled for Saturday or Sunday, and the arrangements that were going to be made and the transfers, and I believe that representatives from Lehman were on those calls. I cannot recall specifically, either the specific discussions or exactly when they occurred.

And it would have -- I think it probably included discussions about how things were going to be done in the transfer of margin and the like.

Q. What clearinghouses are you referring to?

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with foreign clearinghouses, but to the extent that we discussed the accounts that were going over and the credit support for them, to the extent that as part of the business that was being transferred, there were positions in those accounts, they would have been covered by the conversations.

Q. And do you recall any specific such conversations?

A. Well, there were negotiations between the parties about the business, so if you're saying that I'm taking the FCM business and if that business includes positions that are traded on foreign markets, then by definition you're talking about them as part of the same thing. If you are taking that business and customer and other deposits associated with them and assets associated with that business, then yes, you are talking about the margin indirectly, although you may not be specifically singling it out.

Q. That's what I want to do. I want to single it out.

Do you recall a specific singling out, a specific mention of either margin or guarantee

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<p>1 ROSEN</p> <p>2 fund deposit in any conversations other than in</p> <p>3 connection with the OCC?</p> <p>4 MR. HUME: Objection, asked and</p> <p>5 answered.</p> <p>6 A. I think I would say that the</p> <p>7 discussions about the assets that were being</p> <p>8 transferred in connection with the business and</p> <p>9 any deposits is a discussion about guarantee</p> <p>10 fund deposits and margin at those clearing</p> <p>11 organizations.</p> <p>12 Q. I understand that testimony. The</p> <p>13 question is, do you have a recollection or have</p> <p>14 you heard from any of your partners their</p> <p>15 hearing that somebody specifically referred,</p> <p>16 specifically to margin or guarantee fund deposit</p> <p>17 in any of those discussions?</p> <p>18 A. I think that the answer to your</p> <p>19 question is that in the documents, that is</p> <p>20 covered. And I'm confident that there may have</p> <p>21 been -- I shouldn't say that.</p> <p>22 I don't recall the specific</p> <p>23 conversations that we had with the clearing</p> <p>24 organizations and other lawyers who may have</p> <p>25 been involved. We may have or may not have</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 specifically referred to the word "margin" on</p> <p>3 those calls.</p> <p>4 But we did repeatedly exchange</p> <p>5 communications regarding the various forms of</p> <p>6 assets that would be coming over, for example,</p> <p>7 under the TAA.</p> <p>8 Q. We have been talking now about the</p> <p>9 time period over the weekend prior to the</p> <p>10 closing. I would like to just ask you if I have</p> <p>11 missed anything, if we go back to the work that</p> <p>12 you were doing from the 15th on, anytime up to</p> <p>13 that weekend. During that period, do you recall</p> <p>14 any discussions specifically in which margin or</p> <p>15 guarantee fund deposit were mentioned?</p> <p>16 A. Again, I would say in the deal</p> <p>17 documentation relating to the transfer of assets</p> <p>18 associated with those businesses that were being</p> <p>19 transferred and the agreements as to the</p> <p>20 inclusion of deposits, including customer</p> <p>21 deposits, yes, they were the subject of</p> <p>22 communications in that form.</p> <p>23 Q. And what discussion do you remember in</p> <p>24 which anyone specifically referred to margin?</p> <p>25 A. As I say, I don't recall specifically</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 the content of specific conversations that I may</p> <p>3 have had at that time.</p> <p>4 Q. Is there any conversation that you're</p> <p>5 aware of where anyone on the Barclays or Cleary</p> <p>6 side had specifically discussed guarantee funds</p> <p>7 deposit?</p> <p>8 MR. MORAG: You can answer to the</p> <p>9 extent it involves someone on the Lehman or</p> <p>10 OCC or DTC side as well.</p> <p>11 A. It was never raised as an issue for</p> <p>12 discussion, because it was assumed by all</p> <p>13 parties, I think, that it was part of the</p> <p>14 business. And certainly nobody on the Lehman</p> <p>15 side ever suggested or raised the question as to</p> <p>16 its needing to be singled out from the language</p> <p>17 that otherwise covered it.</p> <p>18 Q. Now, when you saw that the draft</p> <p>19 language referring to margin and guarantee fund</p> <p>20 deposit had been removed from the draft, did</p> <p>21 that suggest to you that there needed to be a</p> <p>22 discussion about this or that someone on the</p> <p>23 Lehman side was suggesting that they had</p> <p>24 different assumptions or different</p> <p>25 understandings from what you had?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 MR. MORAG: Objection to form.</p> <p>3 Compound.</p> <p>4 A. As I mentioned, the language that came</p> <p>5 out was actually not specific to OTC -- to</p> <p>6 listed derivatives or listed derivatives</p> <p>7 customers. It was language that sort of</p> <p>8 addressed a variety of issues.</p> <p>9 And so I would not have drawn any</p> <p>10 necessary inference as to what specifically the</p> <p>11 concerns were that, from the Lehman side, were</p> <p>12 being addressed. There were changes to the deal</p> <p>13 that needed to be addressed in that language.</p> <p>14 There were changes in the agreements that</p> <p>15 related to the handling of -- I'm sorry. There</p> <p>16 were changes in the language that was</p> <p>17 documenting, for lack of a better reference, the</p> <p>18 15c3-3 treatment, and indeed the fact that the</p> <p>19 DTC arrangement had essentially changed.</p> <p>20 So it was clear that the language that</p> <p>21 was modified needed to be modified. As to</p> <p>22 whether or not that modification signaled a</p> <p>23 specific view about the treatment of credit</p> <p>24 support for exchange-traded derivatives, you</p> <p>25 would never know until you clarified it with</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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your own language, and to my knowledge, nobody on the Lehman side, when presented with that language, expressed any surprise or objection.

So I think the clear inference is that it was not a surprise to them, and therefore, we inferred that there was no intent to communicate to us that they didn't think it was part of the deal, or anybody else who had the opportunity to see those changes, which would have been all the signatories.

Q. So you didn't feel there was any need to go up and have a specific discussion with the folks on the Lehman side about the removal of the language?

A. I didn't think that there was anything more that needed to be done than to provide to them the language that we thought was appropriate in order to clarify what the deal's agreement was with respect to the treatment of that credit support, that property. That is the way we ordinarily communicate in a transaction of this type.

Q. In the beginning of the, of your paragraph 5, you note that the draft language at

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issue was an attempt to accurately document the business deal. Do you see that?

A. Yes.

Q. What is the business deal that you are referring to there?

A. Here, that Barclays was acquiring the exchange-traded businesses, exchange-traded derivatives businesses of Lehman and the assets and customer deposits and other deposits that were part of that business.

Q. Are you aware of whether there was any business discussion between the Barclays and Lehman folks concerning specifically the acquisition of either margin or clearing fund, guarantee fund deposit?

MR. HUME: Objection, asked and answered.

MR. MORAG: Objection, form.

A. I don't know whether there were or weren't. I assume as part of the negotiation of the deal leading up to the description, the documentation of it, that it was implicit in those discussions.

Q. You go on to say that the draft

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language accomplished this, the beginning of the next sentence. Do you see that, sir?

A. Um-hm.

Q. Can you tell me, what did the draft language accomplish?

A. What did the -- in relation to the exchange-traded derivatives, that it -- what it -- what this -- I am sorry, let me see.

It included language that, as I said, covered a wide variety of things, but also would have provided -- I am sorry, included language that clarified that the property of any kind that was basically held by any of these or in any of these forms, was not an excluded asset under the terms of the deal documentation.

Q. And in the quotes, you have "any and all property," and then you have square parenthesis, "including cash." Do you see that?

A. Um-hm.

Q. Why did you include those square brackets around the words "including cash"?

A. Just as a clarification. It's not necessary, but just for the sake of -- for the avoidance of any lack of clarity.

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Q. Why did you not include those words in the handwritten parenthetical that you provided?

A. The answer to that question -- I'm going to try to answer this without going into attorney/client privileges, but the answer to that question is because we also came to believe that this was not the best location for clarifying this, because this got caught up in provisions dealing with, you know, what the parties understood to be an exception to the excluded assets, and excluded assets included cash. So we wanted to make sure in this provision that it was relevant.

But on the other hand, we realized that providing this clarification in an exclusion to the -- to an exclusion was not the clearest way to do it and, therefore, we decided in response, rather than go back into this provision and start wordsmithing, which we didn't have the time to do, we would just make it abundantly clear, in as concise words as we could, what the purchased assets included in relation to that business.

Q. And you made it abundantly clear by

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1 putting the parenthetical that made clear it
2 included property held to secure?

3 A. Yes.

4 Q. And my question is, why did you not
5 include, beside "property," the words "including
6 cash"?

7 A. Didn't think it was necessary. At
8 this point in time, it was 5 or 6 o'clock in the
9 morning. We were extremely concerned about
10 whether we were going to run out of time in
11 terms of the objective of having this deal
12 signed in time to be announced early in the
13 morning, so as to avoid any negative sort of
14 market reaction to the deal not being announced.

15 And we were trying in as concise a
16 form as possible and as clear a form as possible
17 to get it down and not to get embroiled in
18 parsing words.

19 So I, I mean did I have -- would I
20 have preferred to have had hours to have sat
21 down and drafted it and perfected it? I
22 certainly would. But I thought it was
23 absolutely clear that if we said "any property,"
24 that it would include cash, noncash, securities,

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1 nonsecurities, whether or not it was held by
2 Lehman, by a clearing organization, wherever it
3 was, and whoever was holding it and whatever its
4 character might be.

5 I think for the purpose of clarifying
6 what might have been a subject of dispute in
7 light of the deletion of that language, we
8 didn't think it was actually necessary to
9 include the language, but we were concerned
10 about the sort of negative inferences that could
11 arise, and so we thought because it was an
12 important point for the deal that we would make
13 it as clear as we could, as concisely as we
14 could.

15 Q. You had had a discussion, and we will
16 get to this a little bit later, on the subject
17 of whether cash in the 15c3 account could be
18 transferred to Barclays. You recall that?

19 A. Yes.

20 Q. And in connection with that, some of
21 the Lehman people at least took the position
22 that cash could not be properly transferred?

23 A. I wouldn't describe what they said as
24 that. I would say, this was part of the purpose

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1 of the clarification letter. There were
2 provisions about deposits, customer deposits.
3 There were provisions in the excluded assets
4 provisions of the APA regarding bank accounts.
5 And I think it was clear to us that the 15c3-3
6 assets were assets of the business that we were
7 buying.

8 I would describe what I heard at least
9 as being an expression of concern as to whether
10 in light of what had been said to the court
11 about bank deposits, whether or not if we were
12 going to include cash in bank deposits -- that
13 would be in bank deposits, whether some
14 additional steps might need to be taken, which
15 would have been inconsistent with completing the
16 deal and being able to announce it.

17 But I don't recall anybody saying that
18 it couldn't be done or that it wasn't part of
19 the deal or that it wouldn't be permitted or
20 that it wasn't part of the sale order. There
21 was, I would have said, a decision taken to
22 avoid the issue by limiting the account assets.

23 MR. HUME: We have been going for
24 about an hour. Can we have a break?

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1 MR. MAGUIRE: Sure. If we can just
2 wrap up this. It might take a couple of
3 minutes.

4 Q. Were you at the sale hearing?

5 A. Only during the, for lack of a better
6 word, the intermission. It went into recess and
7 I was there. I was not actually there at the
8 time that it was --

9 Q. Do you know whether the court was told
10 anything about bank deposits as opposed to cash?

11 A. No, I don't know. I just know that
12 the issue about it was raised, and under the
13 circumstances, people were willing to eliminate
14 the issue, rather than -- because I think the
15 feeling was that if we didn't close before the
16 Monday open, there may have been greater
17 jeopardy to the deal.

18 Q. In order to avoid the issue, Barclays
19 agreed that it would not take any of the cash in
20 the Wells Fargo account that was part of the
21 15c3 account?

22 MR. MORAG: Objection to the form.

23 A. I would say Barclays agreed to include
24 language in the clarification letter that only

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called out the transfer of a certain amount of securities associated with the 15c3 account, or if those weren't available, other securities of similar value.

Q. And did not call out the 1 billion dollars in cash that was at Wells Fargo?

A. Not in the clarification provision, correct.

Q. Now, given those discussions, and the decision by everyone to avoid the cash issue, did it occur to you that the words "including cash" should be included in the parenthetical when you described property held to secure?

A. No. No, because I thought there was a clear distinction between deposits and customer deposits and LBI cash in its bank accounts.

MR. MAGUIRE: This is a good time for a break.

(Recess)

MR. MORAG: I should just put on the record, to the extent, Mr. Maguire, you're curious, Cleary did search for all documents, including any handwritten notes, and our production does not include them

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because we were not able to find the markup that you asked about in your examination.

MR. MAGUIRE: I appreciate that.

MR. HUME: I should also state we have looked for it in the Weil production, have not found it. I'm double checking.

THE WITNESS: Which would have been consistent with our handing it to Weil to deal with the document.

BY MR. MAGUIRE:

Q. Sir, before the break, we were in paragraph 5 of your declaration and we were talking about the -- what you referred to as the business deal in the first and second lines of that declaration.

Was it your understanding that the business deal was documented in the asset purchase agreement?

A. It was my understanding that the deal was documented in the asset purchase agreement, the first amendment in the clarification letter.

Q. The language that we have been talking about in the quotes at the bottom of page 2 of your declaration, starting with "any and all

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property," did you draft that language?

A. I'm sorry, could you --

MR. MORAG: Starting here.

Q. Paragraph 5 on page 2 and starting with the language we have been talking about that starts with the quotation "any and all property."

A. I was involved in its drafting, but I think it was, like many things, a bit of a group process.

Q. So who were the members of this group?

A. The members of the group on the Cleary side would have been me, Dana Fleischman, Bob Davis, Duane McLaughlin, possibly David Leinwand. Whether -- the extent to which any of one of them was specifically involved in particular language, I don't recall.

Q. So this was a collective, this language was a collective drafting effort of a number of Cleary lawyers?

A. Yes, although I would say probably principally me.

Q. When it was proposed to the Lehman side, your understanding was that this language

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accurately reflected the business deal?

A. Yes.

Q. Did you ever ask anyone to identify who had negotiated this specific part of the business deal?

MR. MORAG: Object to the form.

I will let you answer if it is -- as to the yes or no, but if it involves a privileged communication, do not go into the substance of the communication.

A. I assume it was negotiated by the principals who negotiated the deal that was ultimately documented in the APA and these documents. I was not privy to those specific negotiations.

Q. Do you know the names of the individuals who negotiated the deal specifically on this point?

A. I don't know who participated in each discussion. I know that Archibald Cox and Michael Klein and Jonathan Hughes and Rich Ricci were involved in the negotiations, but I did not -- I don't have personal knowledge of those exchanges.

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Q. Do you know who was involved on the Lehman side specifically with respect to the business deal that's -- that you describe in --

A. Whoever was in those conversations, and I wasn't present, so I couldn't identify them.

Q. Did the business deal ever change? I'm talking now specifically about that part of the business deal that's the subject of the language you and your group drafted and that you put forth in paragraph 5 of your declaration. Did that part of the business deal change anytime after the discussion of the asset purchase agreement?

MR. MORAG: Object to the form. You can answer.

A. I would say that the only respect in which it changed was reflected in the 3-3 provisions in which Barclays agreed in essence to relinquish the claims specifically in the clarification letter to the -- the non-769 million or whatever it was of securities in the 15c3-3 account.

There were aspects in which the deal

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was evolving as it contemplated it would at the sale hearing in relation to the DTC arrangements. That is all that comes to mind.

Q. And specifically with respect to assets that were related to derivatives, margin or clearing funds deposit, did the deal change anytime after -- the business deal change at any time after the execution of the asset purchase agreement?

A. I'm not aware that it ever changed. only that it was clarified.

Q. You refer, at the bottom of page 2 and top of page 3 of your declaration, to the obligations of LBI or any other person. To whom are you referring with the words "any other person"?

A. It could be -- well, without limitation on what it might include, the two obvious inclusions would have been the obligations of LBI or any affiliate or any customer who was involved as part of these transactions or part of the business that was being transferred.

Q. Then you say, "in an account

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maintained by or on behalf of." Can you tell me what is the distinction here between an account maintained by as opposed to an account maintained on behalf of LBI?

A. Well, Lehman, when Lehman conducts -- when a broker dealer conducts business with a customer or on behalf of an affiliate or for its own proprietary account, it will reflect, it will be required to reflect on its own books and records accounts which are its accounts. Those assets may be held by custodian banks, other banks, clearing agencies, clearing organizations.

So this is meant to not be limited to those specific alternatives to the account as it is described on the books of the carrying broker, to carry anything, wherever it may be, if it was to secure obligations in essence for which BCI was going to become responsible.

Q. And you go on to say, "for which Barclays shall become responsible as of the closing." What were you referring to there?

A. At this point, I believe it was unclear how the DTCC accounts were going to be

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handled, but it was clear that, for example, to the extent that Barclays was a clearing, either a clearing member of a clearing organization which carried accounts, or was a clearing broker carrying positions with other clearing brokers who were clearing members of other exchanges on which positions may have been carried in or out of the United States, whatever the form, that would have been covered.

The point was that if there was credit support available and Barclays was on the hook and potentially subject to liabilities associated with that, that all of those assets would be available.

Q. And were Barclays -- in the case of a foreign account, where Barclays was not taking -- stepping into the shoes of Lehman and taking over from Lehman, the obligations to a foreign exchange or clearing corporation, it would get the exchange-traded derivatives but not the associated assets?

MR. MORAG: Object to form.

A. Not at all. Not at all. That's not what I am saying at all.

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In fact, if BCI was going to be in the chain of financial responsibility for those positions, whether it was because they were taking the account or they were carrying the account or they were carrying the account with a foreign clearinghouse or another broker who was in the clearinghouse, that that would be included.

Q. And that's what I am trying to understand. Where the flip side of that happens, where Barclays was not taking the account, did you consider what happens when Barclays does not take the account at a foreign exchange?

A. I think that language is dealt with elsewhere. And I need the clarification letter to --

Q. So you believe there is a separate provision that deals with when Barclays takes exchange-traded derivatives --

A. I don't recall the specific language. I would prefer to --

MR. MORAG: You have to --

A. I am sorry, I prefer to look at the TSG Reporting - Worldwide 877-702-9580

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clarification letter.

Q. Well, we will certainly get to the clarification letter, but your understanding is that that's not covered by this language; is that correct?

A. Well, there are ellipses in here. This is a very long provision, and I'm not prepared to summarize all the things that it does or does not cover in this abbreviated form. So if you want me to tell you what it covers, you are going to have to give me the provisions so that I can look at them.

Q. Sounds fair. I think it is Exhibit 25.

MR. MORAG: Mr. Maguire, if I recall correctly, Exhibit 25 is the executed clarification letter. You have been asking him questions about language which was not included in the executed clarification letter. So I'm not sure that's going to be responsive to his request.

Q. That may be fair. Maybe we should go through the drafts.

A. I think we should look at the draft TSG Reporting - Worldwide 877-702-9580

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that has this --

MR. MORAG: Only if you have questions about the draft. If you have questions about the final, show him the final.

Q. Why don't we do that. We will go through the drafts and then we will take a look at the final.

Before we do that, let me ask you to scroll down to the end of that paragraph, the bottom of paragraph 5. You refer there to, "which is consistent with the discussions of the lawyers from both sides."

Do you see that reference to those discussions?

A. Um-hm.

Q. Can you tell me what discussions you are referring to there?

A. The discussions negotiating the terms of the deal, which were that Lehman sold the exchange-traded derivatives business and all assets associated with it and all deposits and customer deposits. But basically it is consistent with the treatment in the documentation and therefore the negotiation of

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the documentation relating to what it was that Barclays was getting.

Q. Is there any specific conversation among any two or more lawyers that you were intending to refer to in that last sentence of paragraph 5?

A. I was not present in the negotiations of the original provisions in the APA that this clarifies.

Q. And you're not aware of any conversations that your partners have told you they remember from the negotiation of the original deal?

What I am trying to clarify is just, did you have in mind when you wrote this reference to discussions something either that you remembered or something that one of your partners told you about?

A. No. I'm referring to what would have had to have been discussed if the parties were to come to the terms on which they signed the APA.

Q. I am going to show you a document that has previously been marked as Exhibit 30. Do

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know when you're ready.

And my first question is going to be, have you seen this draft before?

A. I've seen before an e-mail transmittal from Michael Mazzuchi passing on a draft of the clarification letter to DTCC and its counsel at their request, and there being a draft of the clarification letter attached to it that was provided to us by Weil.

But as to whether this is exactly the same draft, I can't say. I would have to verify.

Q. You will see at the bottom of page 1 of the draft is a reference to LBI's clearance boxes.

A. I see that.

Q. Do you know why the word DTC was not included there?

A. My understanding is that it was not included because there were clearance box assets held at locations other than DTCC. So DTCC was not the exclusive depository of clearance boxes, is my recollection.

Q. And what were the other depositories?

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A. I don't remember knowing the details.

Q. Did anyone consider saying DTC and other clearance boxes?

MR. MORAG: Object to the form.

A. I wouldn't speculate as to whether somebody did or didn't. They may have.

Q. In a prior draft, there had been a reference to the box 074, which I understand was the DTC box. Do you have any knowledge as to why that reference was dropped?

A. I am not certain, but I have a recollection that it was because 074 may not have included all of the clearance box assets, that they may not have been confined to the account 074. But I'm not 100 percent certain. I have a recollection of something along those lines.

Q. If you look at the bottom of page 1, you will see there is a parenthetical that says, "provided, however, that purchaser in its discretion may elect within 60 days after the closing to return any such securities to LBI."

Do you see that?

A. Yeah.

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Q. And can you tell me what was the purpose of that?

A. I'm not sure that we were the source of that language. I think that on its face, it seemed to have contemplated that there may be things that, in the clearance box, that Barclays might not have wanted.

Q. And do you have any understanding as to what kinds of assets Barclays would not want from the clearance box?

MR. HUME: Objection, calls for speculation.

A. As I say, I'm not sure that this was motivated by Barclays, and I'm not sure that this wasn't an option that was being provided to Barclays that Barclays didn't see any reason to negotiate, since it gave them the ability to do something but not an obligation to do it.

Q. But you don't have knowledge as to what prompted this?

A. No, I don't. Or I should say I don't recall.

Q. If you turn to page 4, and see the paragraph 8, transfer of customer accounts. And

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towards the end of that, you will see a reference to 15c3.

A. Yes.

Q. And at the end of that sentence, it refers to the phrase, "or securities of substantially the same nature and value."

A. Yes.

Q. Can you tell me how did those words get to be inserted in the clarification letter?

MR. MORAG: Which words? All of them?

Q. The words "or securities of substantially the same nature and value."

A. My recollection of the events for that, following on the discussion which led to the limiting of this provision to 769 million of securities, that Harvey Miller raised the question whether or not it was clear that we could agree to this.

And I told him that I was not aware of a limitation, particularly to the extent as had been represented, that the 769 million dollars was excess to the level that Lehman was required to reserve under 3-3 as of that date, and in response to the question can we do it, I

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suggested that if there was a concern along those lines, which we didn't share -- and I'll say only, my recollection is there was a question raised about it -- that we say to the extent permitted by applicable law and as soon as practicable after the closing.

And because the provision by its terms then raised a question about whether or not this value was going to be conveyed, because the reason this was in here and was the subject of discussion was that there was a significant erosion or concern about the erosion of value and assets that were contemplated to be delivered initially but were not available to be delivered, and that Lehman identified this as a source of value, and so we wanted to make sure that that value was conveyed.

And so as a result of this language, it made us think, well, fine, if you can't give us these 769 million of securities, give us those other securities of a similar nature and value.

That's my recollection of the origins of this provision.

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earlier had a conversations with Mike which, while we didn't discuss specifically the 3-3 reserve account or the amount that was excess, I came away with the impression that he was optimistic that there was going to be sufficient assets.

So I did not have a -- I did not have a -- I did not have a confirmation from him. I didn't have a concern that there would be a deficiency, but I did not have an opportunity to actually go over this with him.

Q. So in your earlier conversation with Mr. Macchiaroli, he was optimistic that there would be sufficient assets available to pay all customer claims; is that correct?

A. Yeah. That -- well, I don't think he would have -- I don't think he would have -- I don't mean to put words in his mouth that he would have made a representation to those effects, but I came away with an impression that he was optimistic that there wouldn't be a shortfall.

Q. And you took from that conversation that there wouldn't be a shortfall in customer

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Q. I'll show you a document we have previously marked as Exhibit 451. Have you seen that before, sir?

A. I don't recall that I necessarily saw precisely this. I do recall that there was a representation made that the SEC had approved as excess a certain level of value and that there was an e-mail. We thought that we were going to see an e-mail saying that. Instead, there was an e-mail, I recall, but which didn't involve -- didn't come from the SEC, but reported that it was approved.

I don't think I have seen this particular document, and I can't say that I recall with precision the numbers for the allocations between cash and securities.

Q. Did you ever discuss Lehman's 15c3 account with Mike Macchiaroli?

A. I don't recall being able -- at the time that I sort of first saw this, which I believe was on a -- or not this -- I was made aware of the e-mail and shown something, I do not believe that I spoke to Mike Macchiaroli, but as I mentioned at the outset of this, I had

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property?

A. Yes.

Q. And you, therefore, expected --

A. Well, I took away that at that point, knowing what he knew, that it looked as though there wouldn't be. I wouldn't say -- I wouldn't characterize it beyond that.

Q. And he didn't tell you to what extent there would be any excess?

A. We didn't discuss any quantification.

Q. Did you have any discussions with anyone at the SEC concerning the reserve account or any excess in the reserve account?

MR. MORAG: Objection, asked and answered.

A. I don't recall.

Q. Now, you were responding to a Weil question. Was it Harvey Miller who said can we do it?

A. I believe it was Harvey Miller, yes.

Q. What he was referring to is the transfer from the 3-3 account?

A. Yes. He was, he was raising the question as to whether there might be a

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<p>1 ROSEN</p> <p>2 Q. And leaving aside the whole construct</p> <p>3 and whole premise, my only question is, you were</p> <p>4 not aware of any limitation, even in the</p> <p>5 event --</p> <p>6 A. I wasn't, I wasn't thinking about all</p> <p>7 of the -- parsing all of the scenarios. There</p> <p>8 was nothing on the face of this agreement that</p> <p>9 to my mind couldn't be accomplished, and from my</p> <p>10 perspective, caveating it with the language "the</p> <p>11 extent permitted by applicable law," even though</p> <p>12 you could argue that that's implicit, was a</p> <p>13 concession that we could readily make in order</p> <p>14 to complete the deal.</p> <p>15 Q. So given that concession, you didn't</p> <p>16 think through what would happen if the transfer</p> <p>17 left unavailable property for customers?</p> <p>18 MR. MORAG: Object to the form.</p> <p>19 A. No, I reject that characterization.</p> <p>20 It was not necessarily the case that there would</p> <p>21 have been any deficit for customers as a result.</p> <p>22 And as a result, because I didn't have the</p> <p>23 information available to evaluate it, I did not</p> <p>24 engage in a hypothetical conjecture as to</p> <p>25 whether -- under what circumstances or set of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 facts there would be a problem.</p> <p>3 But from my perspective, but for the</p> <p>4 concern, which was really a procedural concern</p> <p>5 as a matter of caution, as I understood it from</p> <p>6 Harvey Miller, I believed that these assets</p> <p>7 arguably were intended to be transferred, were</p> <p>8 intended to be transferred as part of the assets</p> <p>9 of the business.</p> <p>10 Q. In any event, you and the Barclays</p> <p>11 side of the house agreed to set aside the cash</p> <p>12 issue by taking the billion dollars in cash out</p> <p>13 of the deal, correct?</p> <p>14 A. By taking the billion dollars out of</p> <p>15 the deal?</p> <p>16 Q. Yeah. The 1 billion dollars in the</p> <p>17 bank account was not being transferred as part</p> <p>18 of the reserve account?</p> <p>19 A. Let me say this. This provision, this</p> <p>20 provision doesn't call for the transfer of that.</p> <p>21 I will leave it to the lawyers to argue what the</p> <p>22 implications of that might be.</p> <p>23 Q. And as to the remaining issue as</p> <p>24 raised by Mr. Miller about can we do it with</p> <p>25 respect to the government securities, somebody</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 proposed that that issue would be resolved by</p> <p>3 inserting the words "to the extent permissible</p> <p>4 by law"?</p> <p>5 A. My recollection is that that was me.</p> <p>6 Q. Now, did all this happen in a hallway</p> <p>7 conversation?</p> <p>8 A. Yes.</p> <p>9 Q. Who was present?</p> <p>10 A. I don't have a clear recollection</p> <p>11 other than Harvey Miller was there, Vic Lewkow</p> <p>12 was there. I think Dana Fleischman may have</p> <p>13 been there at least for some portion of it. And</p> <p>14 there were others huddling around, but I don't</p> <p>15 have a clear recollection, and to be perfectly</p> <p>16 candid, because I wasn't involved in the</p> <p>17 negotiation of this transaction from the very</p> <p>18 beginning, I was not as -- and I was mostly</p> <p>19 troubleshooting specific issues, particularly</p> <p>20 those relating to the clearing arrangements, I</p> <p>21 was not as familiar with the lawyers from the</p> <p>22 other side, so I could not have readily, as</p> <p>23 readily identified them.</p> <p>24 Q. How long did the, did this hallway</p> <p>25 huddling session last?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 A. I honestly don't know. More than a</p> <p>3 couple of minutes, less than a couple of hours.</p> <p>4 Q. And can you tell me what you recall</p> <p>5 being said in the course of this hallway</p> <p>6 conversation?</p> <p>7 A. Pretty much what I have just described</p> <p>8 to you, that there was a group already there</p> <p>9 when I arrived. I guess some predecessor</p> <p>10 language to this was being reviewed, and Harvey</p> <p>11 Miller, as I said, raised the question whether</p> <p>12 there might be limits under applicable law, and</p> <p>13 I said that I wasn't aware of any, but to the</p> <p>14 extent that they exist, and it would address</p> <p>15 your concern, we can provide that the transfer</p> <p>16 be to the extent permitted by applicable law.</p> <p>17 But if there was such a constraint, that that</p> <p>18 basically 769 million dollars in securities</p> <p>19 would come from somewhere else.</p> <p>20 And can I remember exactly what was</p> <p>21 said, whether it was a grunt or a nod or a</p> <p>22 smile, I don't remember, but I remember coming</p> <p>23 away from the conversation feeling that we had</p> <p>24 sort of resolved the point.</p> <p>25 Q. Who was the person who gave the --</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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1 manifested assent with the grunt or nod or
2 smile?

3 A. I could be wrong, my recollection was
4 that it was Harvey Miller, but I could be wrong.

5 Q. Did Mr. Miller agree to your proposal
6 that "to the extent permitted by applicable law"
7 would be inserted into the --

8 A. That was my understanding, yes.

9 Q. Did he also agree to avoid the cash
10 issue by having this provision not call for the
11 transfer of a billion dollars in cash?

12 A. I believe he did.

13 Q. And did that also happen in this
14 hallway conversation?

15 A. It may have been two different
16 conversations or it may have been a continuing
17 conversation. Again, I was called out to deal
18 with other issues constantly, issues that were
19 being dealt with in different rooms and on
20 different floors, so I don't have a clear
21 recollection of precisely what the progress, the
22 progression of discussions were.

23 The cash conversation clearly preceded
24 this. And there may have been a break before
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1 for any reason it is not permissible to transfer
2 the government securities from the reserve
3 account, Lehman has to make that up to Barclays
4 with securities of some other value?

5 A. I'm not sure I would describe it as a
6 third issue, but as an adjunct to the second
7 issue, that if the securities, these 769 million
8 were not available, some other 769 million
9 dollars of securities would be made available.

10 Q. How did that, whatever you want to
11 call it, an adjunct to the second issue or a
12 third issue, how did that issue get raised?

13 A. How did it get raised?

14 MR. HUME: Objection, asked and
15 answered.

16 A. Someone on our side, maybe me, maybe
17 somebody else who was there, I don't have a
18 clear recollection on the second point, but
19 said, well, if there is any contingency to the
20 769 from the 3-3, we get them from somewhere.

21 The whole purpose of this, again, was
22 to say -- we were identifying a source of value
23 that was in the deal in the light of other
24 evaporating value, and so it was important to
25

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1 this issue, it may have been that drafts were
2 prepared and exchanged to reflect the first
3 issue, and then the second issue was raised. I
4 just don't have a clear recollection of it.

5 Q. We seem to have the cash issue, you
6 say maybe came up first, and then we have a
7 second issue is, can we do it, as in
8 transferring the 769, and that gets resolved
9 with your proposed language "to the extent
10 permissible by applicable law," right?

11 MR. HUME: Objection, mischaracterizes
12 his testimony.

13 A. Do you want to repeat the question?

14 Q. If the first issue is the cash issue,
15 the second issue is the can we do it question
16 that Mr. Miller raised?

17 A. Transfer, there was a discussion about
18 the transfer of securities.

19 Q. Which gets resolved with your proposed
20 language?

21 A. Yes. And the documentation of it gets
22 resolved.

23 Q. Do I understand you to be saying there
24 was also a third issue in that somebody said if
25

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1 the Lehman side -- I am sorry, it was important
2 to the Barclays side that if this wasn't
3 available, some other asset would be available.

4 Q. Was there any discussion about the
5 implications for customer property claims --

6 A. No, there was no discussion about
7 customer property claims.

8 Q. And there was no discussion of the
9 implications on customers of transferring 769
10 million --

11 A. None of us, none of us on the Barclays
12 side had anything like the information that
13 would have been necessary to evaluate that, to
14 even raise questions about it. That information
15 was not available, and there was no way for it
16 to become available and to be discussed and
17 analyzed in a time frame that would have enabled
18 the deal to close.

19 MR. MORAG: Let him finish the
20 questions.

21 Q. Can you tell me -- you came away from
22 this meeting with an understanding that Harvey
23 Miller or someone on the Weil side had
24 manifested assent to the proposition that if the
25

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government securities in the reserve account weren't available, some alternative similar securities would be provided.

Can you tell me, how are you -- how do you know that Mr. Miller or his colleague was agreeing to that unconditional transfer as opposed to his nod, his grunt, his smile, whatever you recall, meaning nothing more than this conversation is at an end or that we agree to your proposed language "to the extent permitted by applicable law"?

MR. MORAG: Object to the form.

A. I don't think I have more to add, more than what I have already said, except to say that a draft was provided to us by Weil that reflected that agreement.

Q. You got a draft from Weil which provided that Barclays -- that Lehman would transfer to Barclays 769 million from the reserve account or securities of a substantially similar nature. Are you aware of that?

A. I recall that.

Q. What was the reaction on the Barclays' side when you got that draft?

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A. We didn't know what "or nature" meant and whether it was clear that it meant that they would be of equivalent value. So we added the words "or value." I believe I may have made that change.

Q. Did you have any discussion with anyone at Weil to find out what they meant by adding the words "substantially similar," without the words "in value"?

MR. MORAG: Objection, foundation.

You have not established that Weil added these words as opposed to mistyped or didn't type the Cleary proposal.

Q. Well, let me back up. I thought you said you were provided with a draft from Weil that included the words "substantially similar nature"?

A. I believe I was shown a draft that included that language, an interim draft that included that language.

Q. Do you know who provided you that draft?

A. I don't have a clear recollection, but my assumption is it was Weil. That's my
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assumption.

Q. Did you have any discussion with Weil about that draft and specifically about those words in that draft?

A. Yes, in the sense that we provided a markup of it with the words "or value," and that seems to have been accepted as an appropriate clarification of the agreement that we had reached earlier and reflected in the next turnover of documents.

Q. Any communication between the Cleary and the Weil folk, other than --

A. Yes. The language "or value," which I think speaks for itself.

Q. I'm just saying, anything beyond that?

A. I don't think there needed to be anything beyond that.

Q. And have you heard from your partners whether they are aware of anything beyond that?

A. I don't have a recollection of discussing it.

MR. HUME: Are you going to finish before lunch or should we take a break for lunch or take another break? Either way I

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think we can use another break. We have been going for an hour and a half.

MR. MAGUIRE: Why don't we take a break, and if lunch is ready, this is a fine time for lunch. I certainly will continue after lunch.

MR. HUME: You will.

MR. MAGUIRE: Yes. I still have quite a bit to go.

(Recess)

BY MR. MAGUIRE:

Q. Sir, before the break, you were describing the hallway conversation at Weil Gotshal's offices concerning the 3-3 account, and I note that is a subject of paragraph 7 of your declaration; is that correct?

A. Yes.

Q. In paragraph 7, and you don't refer to the contingency that you described in your testimony earlier today concerning what would happen if Barclays did not get or Lehman could not transfer government securities from the 3-3 account. Do you see that?

A. Um-hm.

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<p style="text-align: right;">Page 114</p> <p>1 ROSEN</p> <p>2 Q. Can you tell me why you did not refer</p> <p>3 to that contingency in your declaration?</p> <p>4 A. No.</p> <p>5 Q. Earlier in your declaration, in</p> <p>6 paragraph 5, you refer both to the removed</p> <p>7 language that we have discussed earlier, the</p> <p>8 language that starts, "any and all property" --</p> <p>9 you remember that? -- and also to the</p> <p>10 parenthetical that ultimately ends up being</p> <p>11 inserted in the clarification letter, that's a</p> <p>12 parenthetical that reads, "and any property that</p> <p>13 may be held to secure obligations under such</p> <p>14 derivatives."</p> <p>15 A. Correct.</p> <p>16 Q. Can you tell me why when you posed the</p> <p>17 parenthetical, you didn't simply put the earlier</p> <p>18 language in the parenthetical?</p> <p>19 A. The only reason is that it was -- the</p> <p>20 original language had been obviously subject to</p> <p>21 modification, and I didn't want to get</p> <p>22 embroiled -- we didn't have time to get</p> <p>23 embroiled in sending back language and having</p> <p>24 extensive negotiations.</p> <p>25 So the purpose of doing it this way</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 115</p> <p>1 ROSEN</p> <p>2 was to do it as simply and clearly as possible</p> <p>3 and not resurrect language that might have</p> <p>4 been -- for other reasons raised issues in</p> <p>5 people's minds for reasons unrelated to the</p> <p>6 point that was intended to be conveyed here,</p> <p>7 clarified here.</p> <p>8 Q. By inserting the parenthetical, did</p> <p>9 you mean anything different from what you say in</p> <p>10 your declaration, paragraph 5 was documenting</p> <p>11 the business deal?</p> <p>12 MR. MORAG: Object to the form.</p> <p>13 Q. In other words, did you mean anything</p> <p>14 different in the language in the parenthetical</p> <p>15 from the earlier language that had been removed?</p> <p>16 MR. HUME: Objection, I think you are</p> <p>17 really calling for him to interpret the</p> <p>18 contract now.</p> <p>19 MR. MAGUIRE: No, no, I am asking what</p> <p>20 he meant at the time.</p> <p>21 A. What I will say is that I meant to</p> <p>22 express the thought reflected in the markup, but</p> <p>23 I didn't parse, because I didn't have time to</p> <p>24 parse the differences in the wording. And this</p> <p>25 was intended to pick up everything in a shorter</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
<p style="text-align: right;">Page 116</p> <p>1 ROSEN</p> <p>2 and more concise formulation.</p> <p>3 Q. Do you know how much in value terms</p> <p>4 this parenthetical picked up?</p> <p>5 MR. MORAG: Objection to the form.</p> <p>6 Q. In other words, do you know how much</p> <p>7 property there actually was that was held to</p> <p>8 secure obligations under such derivatives?</p> <p>9 MR. HUME: The question is whether he</p> <p>10 knows today?</p> <p>11 Q. Did you know at the time what the</p> <p>12 dollar amount of that was?</p> <p>13 MR. MORAG: And I object, lack of</p> <p>14 foundation.</p> <p>15 Go ahead.</p> <p>16 A. I did not know the precise number, no.</p> <p>17 Q. Did you have a general understanding?</p> <p>18 A. I would have assumed it was a</p> <p>19 significant amount of, significant amount of</p> <p>20 money. Lehman was a very significant, one of</p> <p>21 the largest investment banks. They had a very</p> <p>22 significant business, and I would have assumed</p> <p>23 that with a significant business would come</p> <p>24 significant customer property to margin the</p> <p>25 proprietary and customer activities that were</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p style="text-align: right;">Page 117</p> <p>1 ROSEN</p> <p>2 going on.</p> <p>3 So the bigger it was, the more</p> <p>4 concerned I was about it.</p> <p>5 Q. Did you understand that the customer</p> <p>6 margin was in the billions of dollars?</p> <p>7 A. I didn't have specific knowledge of</p> <p>8 it, but it wouldn't surprise me to hear that. I</p> <p>9 expected it to be a large number.</p> <p>10 Q. Did you understand what the</p> <p>11 proprietary margin was that was in the billions</p> <p>12 of dollars?</p> <p>13 A. I would have expected it to be of that</p> <p>14 kind of magnitude, but I didn't know exactly</p> <p>15 what it was.</p> <p>16 Q. Do you know whether the folks at Weil</p> <p>17 had an understanding as to how much property was</p> <p>18 picked up by the parenthetical?</p> <p>19 MR. MORAG: Object to the form and</p> <p>20 foundation.</p> <p>21 A. All I'll say about that is that they</p> <p>22 had more ready access to that information</p> <p>23 through their client than we had.</p> <p>24 Q. What about the trustee, do you know</p> <p>25 whether the trustee had any knowledge about the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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amount of the property that was the subject of that parenthetical?

A. I can't speak to the state of mind of the trustee, but I assume that as part of this, the trustee was looking at what was there.

Q. Is your answer the same with respect to the creditors committee?

A. I've had no direct interaction with them, the creditors committee, such that I can recall.

MR. MAGUIRE: We will mark as Exhibit 623 a document dated September 19, 2008, Bates stamped GCGSH0002699 through 700.

(Exhibit 623, document Bates stamped CGSH0002699 through 700 marked for identification, as of this date.)

A. Can I back up a second to your previous question? In terms of what the trustee and Weil knew about the amount of the margin, they would have known -- they were copied on e-mails which -- from OCC just in the context of OCC that suggested that just the pays and collects from -- for the Monday would have been

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on the order of several hundreds of millions of dollars, which would have suggested an extraordinarily large amount of positions and therefore margin associated with them.

So they could have inferred that it would be an extremely significant amount of margin.

Q. When you refer to the pays and collects, what are you referring to?

A. The accounts are marked on a periodic basis by the clearinghouse, and it was sort of what additional flows are coming in or going out between the clearinghouse and the clearing member as a result of the changes in the marks or the exercises of contracts or whatever other activity is being conducted in the account.

Q. And what's a pay?

A. Well, it depends on what your perspective is, but some amounts are paid by the clearinghouse to the clearing member, and there are amounts that are paid, so if you are receiving the funds, you are the collect, and if you are paying the funds, you're the pay.

Q. Do you know whether the trustee or

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Weil actually received any information concerning pays or collects at the OCC prior to the closing?

A. I believe they were copied on e-mail correspondence from the OCC, but that may be a misrecollection, but I believe there was a lot of correspondence including another e-mail that referred to a billion dollars and that confirmed that OCC was going to transfer all of that to Barclays, as we would have all expected.

Q. And did you receive any response to Exhibit 623?

A. I don't have a clear recollection of a specific response to this except that the SEC, after this interim exchange of communications regarding DTCC, stepped up to support the transaction, so presumably if they had had a problem, they would have raised it in connection with their support of the transaction.

Q. We will mark as Exhibit 624 a document Bates stamped DTCC 00126 through 00198.

(Exhibit 624, document Bates stamped DTCC 00126 through 00198 marked for identification, as of this date.)

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Q. Is this an e-mail you received from DTCC on or about September 20, 2008?

A. Appears so.

Q. It is a lengthy document. I am really going to ask you only about one of the attachments, the contents.

MR. MORAG: Just for the record, there do appear to be other e-mails starting at page 180 that may or may not be part of this. Since they are dated later, I don't know that they could have been part of the original e-mail.

Q. I'm not going to ask you about anything after 178. But if you could take a look at the pages that begin 175.

A. Um-hm.

Q. You will see on page 176, the first paragraph concerns assumption of accounts.

A. Right.

Q. Was there at one point in time a discussion whereby Barclays was assuming the DTC -- the Lehman accounts at DTCC?

MR. MORAG: Object to the form.

MR. HUME: Object to the form.

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<p>1 ROSEN</p> <p>2 A. He conveyed Barclays' reluctance to</p> <p>3 assume the obligation to provide any form of</p> <p>4 guarantee beyond the 250 million dollars</p> <p>5 representing the holdback of that payment that</p> <p>6 would otherwise have been made to Lehman under</p> <p>7 the APA, and there would have been -- there was</p> <p>8 a call -- there was a point at which he said, he</p> <p>9 conveyed to DTCC that because Barclays was not</p> <p>10 willing to accept more liability than that, they</p> <p>11 would not be accepting the transfer of those</p> <p>12 accounts.</p> <p>13 Q. Anything else you remember Mr. Cox</p> <p>14 saying in any of the Sunday night calls?</p> <p>15 A. I really don't recall specifics.</p> <p>16 There was undoubtedly a lot more discussed and a</p> <p>17 lot more give and take, but candidly, I cannot</p> <p>18 remember the specifics of the dialogues. There</p> <p>19 would have been conversations about, gee, does</p> <p>20 DTCC really need all the credit support that it</p> <p>21 is asking for, can't it get comfortable, it has</p> <p>22 better access to the information than Barclays</p> <p>23 does. It would have been of that nature, but I</p> <p>24 just, sitting here now, can't recall the</p> <p>25 conversations.</p> <p> TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 Q. Anything you recall Jonathan Hughes</p> <p>3 saying?</p> <p>4 A. Not really. I don't have a specific</p> <p>5 recollection. I think -- I'm sure that he</p> <p>6 reiterated or articulated many of the same</p> <p>7 themes as Archie Cox, because the Barclays view</p> <p>8 was, at that point, pretty well settled that</p> <p>9 they were not prepared to assume additional</p> <p>10 potentially substantial liabilities.</p> <p>11 Q. Anything you recall Mr. Hughes saying</p> <p>12 beyond what you said?</p> <p>13 A. Not specific words, no.</p> <p>14 Q. Anything you recall Michael Klein</p> <p>15 saying?</p> <p>16 A. No.</p> <p>17 Q. Anything you recall Mr. Larocca</p> <p>18 saying?</p> <p>19 A. Well, there were a lot of</p> <p>20 conversations also about sort of the pipes and</p> <p>21 the plumbing and sort of the operational aspects</p> <p>22 of what was going to be the mechanism for DTC</p> <p>23 to effect the transfers of securities that needed</p> <p>24 to be effected as part of the transactions, what</p> <p>25 accountant are they going to go to or through,</p> <p> TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 or how that was going to be hooked up or</p> <p>3 handled, but I was not focused on those because</p> <p>4 I regarded them as essentially operational</p> <p>5 matters.</p> <p>6 Q. Was that an issue that was in</p> <p>7 Mr. Larocca's purview?</p> <p>8 A. Yes, I think so -- yes.</p> <p>9 Q. Did he speak to that?</p> <p>10 A. He did, and he may have delegated some</p> <p>11 of the details of it to people who reported to</p> <p>12 him.</p> <p>13 Q. Do you recall Mr. Larocca saying in</p> <p>14 any call on Sunday night or early Monday morning</p> <p>15 we are not taking anything?</p> <p>16 A. I do not recall Gerard Larocca saying</p> <p>17 that or anyone else saying that, because it</p> <p>18 was -- the whole purpose of the DTC endeavor was</p> <p>19 to resolve their concerns in a manner that would</p> <p>20 enable them to effect the transfers of assets</p> <p>21 that were necessary to consummate the deal. So</p> <p>22 it would have been a ludicrous thing for anyone</p> <p>23 to have said, because otherwise, why did we need</p> <p>24 to be dealing with DTCC?</p> <p>25 Q. Was anyone from DTCC present for any</p> <p> TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 of these discussions?</p> <p>3 A. These -- they were on the phone.</p> <p>4 There was nobody from DTCC in the room at Weil's</p> <p>5 offices.</p> <p>6 Q. Who did you understand was</p> <p>7 participating from DTCC?</p> <p>8 A. My understanding was that it was Larry</p> <p>9 Thompson, the general counsel; his deputy, Isaac</p> <p>10 Montal, Shelly Hirshon, their outside counsel,</p> <p>11 and Don Donahue, the chairman of DTCC, at least</p> <p>12 at some -- at least in some portions of the</p> <p>13 conversation.</p> <p>14 Q. And who was the person who did most of</p> <p>15 the talking for DTCC?</p> <p>16 A. My recollection was that it was Larry</p> <p>17 Thompson.</p> <p>18 Q. Did you understand at some point, DTCC</p> <p>19 was considering issuing a cease to act with</p> <p>20 respect to Lehman?</p> <p>21 MR. MORAG: Object to the form.</p> <p>22 A. After Barclays had conveyed to DTCC</p> <p>23 that Barclays was not going to accept a transfer</p> <p>24 of the accounts, I believe Larry Thompson</p> <p>25 indicated -- and I don't recall exactly when</p> <p> TSG Reporting - Worldwide 877-702-9580</p>

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this was -- that they would issue a cease to act, which meant that once the pipeline and these transactions were transferred, DTCC would be liquidating positions and closing out the account and not accepting any other transactions.

And I received a call from Don Donahue to say, you know, if we could avoid doing that, they would prefer to do that, because they hadn't done it before, and which I told him I would convey to the client.

Q. Do you have an understanding of what the consequences would be for the transaction if the DTCC were to issue a cease to act notice?

MR. MORAG: Objection to form.

A. My understanding is that it wouldn't have affected the transaction.

Q. Did you have any discussion with anyone as to whether Barclays could or would close the transaction if DTCC issued a cease to act notice?

MR. MORAG: Again, Mr. Rosen, if your discussions are with anybody outside of Barclays, you can answer. Not -- if not,
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say you are not able to answer.

A. Would you mind repeating the question.

Q. Yes. The question is whether you had any discussion, any conversation with anyone about whether Barclays could or would close the transaction if DTCC were to issue a cease to act.

MR. MORAG: Do you have a time frame on when the issuance was supposed to be?

A. It really --

Q. Yes, the Sunday.

A. Can I just -- let me just say this.

It really depends. Your question presupposes with respect to what point in time the cease to act would take effect.

If -- I did have a conversation with Shari Leventhal at the Fed, which the substance of which was that I expressed my concern that we were not making rapid progress in the negotiations with DTCC toward a resolution in which they would accept a much more limited amount of credit support, and I was worried that we were running out of time, and we thought that it might be helpful to let the Fed know, that we
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didn't want the Fed to find out at the last minute that this thing was falling apart for reasons unrelated to, you know, the actual negotiation of the deal, that because of a problem with DTCC.

So I spoke to Shari Leventhal and said, if we can't reach a resolution with DTCC and DTCC does not agree to process the transactions, absent other arrangements, we are not going to be able to close this, at least in the manner in which we had contemplated.

And I did have that conversation with her.

Q. Can you help me out and explain, because I thought you had told us that a cease to act from DTCC would not have affected the transaction, but I thought you also told us --

A. I also told you it depends at what point they are ceasing to act. And if they cease to act following the processing of the transaction and the transactions that are in their pipeline, we would have been able to close the transaction. If they said as of Saturday, we are ceasing to act and we are not going to

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accept any other instructions on Monday to transfer customer or proprietary agents, that would have been a very different result than the one which ultimately obtained.

Q. And when you told us earlier that after Barclays had made clear it was not accepting the transfer of accounts and Larry Thompson responded that DTCC would issue a cease to act, what did you understand the timing of that notice that he was talking about to be?

A. My understanding was that DTCC was going to issue a cease to act after processing trades in the pipeline, including the transfers that were necessary to implement the deal, and that there had been operational calls, my understanding was to sort of discuss the plumbing and how you accomplish that.

Q. So Mr. Thompson was simply telling you that they would issue a cease to act after clearing all the pipelines, all the uncleared trades after the closing?

A. Yeah, I didn't think -- I did not understand him to be saying -- well, I'm going to add some clarification to this. There was a

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point at which we were not, we did not have a meeting of the minds with DTC about what, in addition to 250, Barclays might make available, and DTC, DTCC was not, had not yet agreed to accept only the 250 million, so you had two parties who were -- who lacked a meeting of the minds.

In that context, Larry Thompson may well have said basically, you know, if we don't get what we want, we are just going to cease to act and you are going to have to figure things out for yourself. That was some of the need to deal with that issue, so we could close expeditiously and not have to create some kind of a work-around, was precisely why we continued the negotiations until DTCC would be willing to process the transactions that were in the pipeline and transactions that are associated with this deal.

Q. Was that comment by Mr. Thompson about what they would do if they didn't get what they wanted, was that in response to hearing from Barclays that Barclays was not accepting transfer of the accounts?

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A. Again, you have got to focus on the time. I think at some point it was made clear that not having the credit support meant that after the cease to act, when a meeting of the -- when DTCC agreed that on the understanding that it was going to get the 250 million in credit support but no more, the fact that they would have to cease to act was never presented by him as, you know, something that would have precluded the very reason that we were having the negotiations, in order to enable the transaction to close by processing and making the transfers.

Q. Let me try --

A. You couldn't accept a transfer of customer accounts and get that business if the accounts couldn't be -- and the assets in them couldn't be transferred by DTCC. Everybody realized that they had to agree to do that and not shut the pipes down.

Q. Yeah, I'm not interested in what would or could have happened. I want to get the sequence of your recollection down right.

I understand that on Sunday night at
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some point, Archie Cox described to DTCC Barclays' reluctance to assume the accounts and made plain that Barclays was not accepting the transfer of the accounts of DTCC?

A. Yes.

Q. That's correct?

Now, what was -- in response to that, did Mr. Thompson say in words or substance if DTCC can't get happy, it will issue a cease to act?

A. I don't recall it being specifically in response to the -- you know, the articulation of the final position or whether it occurred in the course of earlier assertions of the position. But it was clear in their minds that if they didn't have a -- if they did not have adequate credit support or a viable creditworthy clearing member, that they were not going to take the risk of just carrying the accounts open and continuing to accept positions. They would have to go through the process that they described as ceasing to act.

Q. And they made that clear to Barclays?

A. Yes.

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Q. Can you tell me, what happened or what was the event that triggered the decision by Barclays that it would not accept a transfer of accounts at DTCC?

MR. MORAG: I caution you from disclosing any privileged communications.

A. Can I consult on the privilege question?

Q. Sure.

(Recess)

Q. Would you like the question, sir? Can you tell me what happened or what was the event that triggered the decision by Barclays that it would not accept a transfer of accounts at DTCC?

A. After the report from the operations team, of the operations team to their principal, their principals, Archie Cox, the decision was made that they would not -- they would not accept the possibility of liabilities in excess of 250 million dollars, and they confirmed to DTCC that they were firm on their position they weren't going to accept the accounts.

Q. When was the report of the operations team received?

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A. Other than that it was earlier in the evening on Sunday, but possibly late, I don't have a specific recollection.

Q. Do you have any sense of the timing as to when a decision was made by Barclays that it would not accept any liabilities beyond the 250 million?

A. Well, I think internally they had reached that position -- we were trying in good faith to see whether they could get enough information to make them comfortable, but it was finally communicated that they were firm on the 250 and not accepting the accounts, maybe like 11 o'clock, something like -- it was quite late on Sunday night.

Q. And was that Mr. Cox who conveyed that to DTCC?

A. I believe so, I believe so.

Q. Was Larry Thompson on the call in which --

A. I believe so.

Q. He was?

A. I believe so.

Q. Did Mr. Thompson make a reference to
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issuing a cease to act on that call?

A. I don't recall him specifically making a reference at that time in response to it. But to be clear, the understanding was that the cease to act was not in respect of the processing of any of the transactions that -- any of the -- processing any of the transfers that were part of the transaction.

Q. Now, when did you have the call with Shari Leventhal?

A. Earlier in the evening. Whether it was at 5 o'clock or 8 o'clock or 9 o'clock, I don't honestly recall.

Q. Did you have any follow-up call with her?

A. I don't recall that I had a follow-on, one-on-one call with Shari. It's possible that I did, but they were on the open line which was established for the purpose of reporting to all people who needed to know simultaneously, because we were under a very tight time frame, sort of what was open and what was being agreed.

There was an open line with the Fed and the SEC and other interested parties, and I
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believe that at least at some point, she was on to hear the results of the negotiations. She may have gotten information from DTCC, I just don't recall specifically.

Q. Can you tell me what else you recall Larry Thompson saying in the various conversations on Sunday night?

A. For the most part, I recall him justifying their need for collateral in excess of the 250 million dollars. That was the point at which they were willing to go forward on that basis.

Q. How did he justify that?

A. That they were -- his team, you know, were concerned about the risks.

Q. Do you recall anything specifically said about the risks?

A. Mostly my recollection is, you know, there is uncertainty, there is a lot in there to do, it would take time, we can't know exactly what the results of the liquidations will be. I mean they are a clearinghouse, they are a conservative organization, and they viewed the risk conservatively.

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Q. Do you recall him saying anything further about a cease to act other than what you have told us?

A. Nothing beyond what I told you.

Q. Do you recall saying, addressing specifically the subject of whether the -- of when the cease to act would take effect and the impact that it would have on the transaction or on the unsettled trades that were at DTCC?

MR. MORAG: Objection, asked and answered.

A. He never suggested that there would be any impact as the transaction was resolved. The purpose of the resolution was that there would be no impact.

Q. Did he ever address whether the cease to act would have an impact on outstanding unsettled trades?

A. Mostly what I recall him focusing on was they don't like to cease to act because it means that other participants in the marketplace aren't going to receive the benefit of the processing that they would otherwise do when those transactions came in, and hadn't had to do

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it in the past.

My impression was that they were more concerned about the public relations implications of a clearing corporation doing that than they were focused on any impact on us, because it was a mutual premise that the purpose of this was to enable us to close and process the transactions.

Q. Did he ever say anything to indicate that his references to cease to act related exclusively to a notice that would come into effect after the closing and after all of the unprocessed, unsettled trades of Lehman had been cleared by DTCC?

MR. MORAG: Object to the form.

A. I think in going over the terms of the arrangements it was clear that the transactions that were the subject of the acquisition, those transfers were going to be made, and I don't think there was any implication of any kind, it would have been absurd for there to have been an implication that we reached an agreement with DTC and by the way, they were going to not process the transactions.

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Q. Let me ask you about the time period prior to reaching a meeting of the minds with DTCC. At any time before that, did he give any representation or assurance to Barclays that while DTCC might issue a cease to act, it would not affect the transaction, and that they would honor and process all unsettled trades? Did he say that in words or substance?

A. I am sorry, can you repeat that.

Q. Yes. At any time prior to the meeting of the minds between Barclays and DTCC, did Larry Thompson in words or substance say, we may have to issue a cease to act, but it will not affect the transaction, and notwithstanding our cease to act, we will make sure that it takes effect only after all unsettled trades have been cleared?

A. No. I think that if the -- if we hadn't reached an agreement with DTCC, then we had, we had the prospect of having to figure out another way of consummating the transaction if they were not going to process trades, and basically what DTCC was saying was that if they were going to continue to process trades and act

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for these accounts, then they wanted more credit support than they would have if they were left to look only to the assets of LBI.

Q. Is there anything further you recall Larry Thompson saying on the Sunday night other than what you have told us?

A. I'm sure there is a lot more that could be said. I just don't have a specific recollection of that.

Q. And all my questions are just to your recollection.

What about Mr. Montal? Do you recall anything that Mr. Montal said in any of the conversations on Sunday night or early Monday morning?

A. He was not a prominent speaker, at least while I was in the room.

Q. Anything that you recall?

A. I don't have a specific recollection of what he might have said.

Q. What about Shelly Hirshon?

A. I don't remember Shelly Hirshon speaking of it.

Q. You did tell us about Don Donahue

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making a call to you. Anything else that you recall hearing from Dan Donahue on the Sunday night?

A. No. No more than that conversation.

Q. I have been asking you now about the conversations with DTC for some time limited to the Sunday night, and I know that there were conversations that may have spilled over into the wee hours of early morning. So if we include Monday morning, are there any conversations by any of the participants that you recall that you haven't told us about?

A. I have a vague recollection that there may have been continuing discussions on the operations side in anticipation of the closing of the transaction, and the balance of the exchanges were between the lawyers trying to reflect what had been agreed in I think what's become or been referred to as the DTCC letter.

Q. And anything else, if you recall?

A. Not that I specifically recall, sitting here.

Q. We will mark as Exhibit 625 a document Bates stamped DTCC 00359 through 361.

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(Exhibit 625, document Bates stamped DTCC 00359 through 361 marked for identification, as of this date.)

A. I recall this.

Q. If you look at the e-mail at the top, the first page, sir. Can you tell me what you meant when you said, "The obligations and entitlements in relation to the funds run between DTC and the LBI estate, not between Barclays and DTC"?

A. Because the credit support was going to be limited to the 250 million dollar cash payment, we thought that since we could direct that payment, I thought that since it was possible to direct that payment on Lehman's behalf, so that the DTC got hold of it, it was -- as far as the transaction was concerned, that was an asset of -- that would otherwise have been an asset of the estate that was being made available to provide credit support, and since it would otherwise have been an asset, that the arrangements relating to that were between Lehman and DTC and didn't need to be between Barclays.

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So my feeling was that to keep things simple, we didn't really need to have a separate agreement.

Q. Let me show you a document that's previously been marked as Exhibit 606.

While we are waiting for that, sir, how did the impasse between Barclays and DTC get resolved? How did the parties reach a meeting of the minds?

A. There were conversations staking out positions. The parties would go off. There was due diligence being done on both sides, because both sides wanted to know what the risks were, and they would get back on the telephone, and at some point, DTC decided that the position that had been articulated by Barclays was acceptable to it.

Q. So DTC had previously refused to accept Barclays' position of limiting the recourse to 250 million, but it changed its mind at some point on the Sunday or early Monday?

A. Until late on Sunday night, DTC had not signaled its agreement to go forward based on the 250 million dollars.

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Q. How did DTCC signal its agreement?

A. On a conference call, it -- Larry Thompson said, we are willing to go forward on this basis.

Q. And what was the specific thing he said with respect to the basis?

A. That Barclays would not be assuming the accounts and that the credit support that would be made available would be limited to the 250 million dollar holdback on the purchase, on the 250 million dollars.

Q. Is that something that you recall Larry Thompson specifically saying?

A. I could be wrong, but that's my recollection. My recollection is that Larry was largely the spokesperson for DTC.

Q. And did Larry explain what prompted DTCC to change its position?

A. No. I don't recall -- I don't recall having an explanation from him.

Q. Did you have any understanding as to what prompted DTCC to change its position?

A. I assume that -- all I can say is that I assumed with more time, they got a better

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understanding of what the assets and the risks were, and assumed that they decided that would be acceptable for them, to take the liquidation risk with the assets that they had in the 250 million.

But he didn't give us a quantitative -- he didn't share his quantitative analysis of their evaluation of that risk, nor did we expect them to.

Q. When did this meeting of the minds conversation happen?

A. It was very late on Sunday night. Sometime before midnight, I think.

Q. Do you know whether it was before midnight or after midnight?

A. I would have to refresh my recollection.

Q. How would you do that?

A. I would look at the e-mail traffic.

Q. Anything else?

A. I think that is all that I would have available to me today to help.

Q. I show you a document previously marked as Exhibit 606. Sir, you received this

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e-mail?

A. Yes.

Q. Does it -- do you see the reference to "earlier this evening," the first line? Does that refresh your recollection as to -- the first line of the e-mail, cover e-mail, does that refresh your recollection as to when the agreement was reached?

A. Well, I know it was before 3:43 a.m. How much before -- I remember we felt that we tended to wait a long time to get drafts back from the other side, but I don't recall.

Q. Who prepared this draft?

A. This was -- it appears to have been prepared by DTC or its counsel, but I don't know specifically.

Q. Did you have any discussions with DTCC or its counsel anytime after receiving this e-mail?

A. Most of the direct negotiations regarding this were conducted by my partner Mike Mazzuchi. I did exchange e-mails including, I guess it was slightly earlier in the evening, with Sheldon Hirshon. There may have been later
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e-mails exchanges, I don't recall.

Q. Leaving aside e-mails, do you know whether Mike Mazzuchi had discussions with anyone at DTCC after circulating or the circulation of this draft that has been marked as Exhibit 606?

A. Well, with their counsel, certainly. I don't recall whether or not he was, he had conversations that included individuals from DTCC.

Q. Do you know what conversations he had with their counsel?

A. Other than to discuss changes to this document prior to its finalization, I don't.

Q. And do you know whether there were in fact discussions as opposed to e-mail exchanges?

A. I don't -- I think it was principally exchanges of drafts. It was very late and people were very tired.

Q. If you turn to paragraph 1, sir, the winding down of accounts. Did you review this at the time?

A. I don't recall specifically whether I looked at this draft or a subsequent draft.

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Q. Did you understand that, at the time this draft was received, that there was an agreement, a meeting of the minds between Barclays and DTC whereby all of the assets in the Lehman accounts at DTC were going to go to Barclays and the accounts themselves were going to stay at DTCC?

MR. MORAG: Object to the form.

A. Could you repeat the question.

Q. Did you have an understanding at the time you received this e-mail that there had -- there was an agreement, a meeting of the minds between Barclays and DTCC?

MR. MORAG: That's the only question?

MR. MAGUIRE: Yes.

A. Yes.

Q. And did you understand that that agreement involved the accounts, the Lehman accounts staying at Lehman and at DTC?

A. Yes.

Q. Did you understand what was happening to the assets in those accounts?

A. Insofar as Barclays was concerned, our understanding was that the assets, whether they

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were proprietary assets or customer assets that under the deal terms were to be transferred, would be processed.

Q. And once those transactions were all processed, who owned the assets in the Lehman accounts at DTCC?

A. The residual assets that were not to be -- whatever we didn't -- whatever Barclays didn't buy or acquire was part of the Lehman estate.

Q. Did you have an understanding as to whether Barclays was acquiring any of the assets at the -- in the DTCC clearance boxes?

A. Yes. Yes, my understanding is that they were acquiring those assets.

Q. And so that at the closing, those assets would then belong to Barclays?

A. Contractually, yes, at the closing there would have been an agreement to transfer them to Barclays, an understanding that those transactions would be processed by DTCC and not be subject to a cease to act.

Q. And was that explained to the DTCC, that the assets in the Lehman accounts would

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contractually belong to Barclays at closing?

A. The DTCC was provided at their request a draft of the agreement that reflected the -- what do you call it? -- that reflected the agreements to transfer the clearance box assets as part of the deal.

Q. A draft of the clarification letter?

A. A draft of the letter, right.

Q. Other than providing the DTCC with a draft of the clarification letter, did anyone on the Barclays side explain to DTCC that the assets --

A. I believe that that was the subject of discussions on an operational level, because they wanted to impose a cease to act at some point, and they had to figure out a way to effect the transfers and do whatever else that they wanted to do under their rules.

Q. Did you participate in any of the operations conversations in which anyone from the Barclays side explained to anyone on the DTCC side that all of the assets at, in the Lehman accounts at DTCC were being acquired by Barclays?

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A. No, I don't think that I said that all of the assets in those accounts were being acquired. There are some assets that were being acquired, some assets that were not being acquired. There were customer accounts that were being transferred and presumably other customer accounts that were not part of the deal. I mean customer securities.

That was dealt with in the clarification letter. What Lehman was and was not selling to Barclays was not the subject of the DTCC letter. The DTCC letter from the beginning was about financial responsibilities to DTCC for the liabilities associated with those accounts.

Q. And did anyone explain to DTCC that Barclays understood there to be a distinction between the accounts and the assets in the accounts?

A. It would have been an absurd conversation to have with a clearing corporation, because a clearing corporation is basically structured fundamentally on the premise that there is a difference between legal

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ownership and responsibility for accounts and beneficial ownership and entitlement to the assets in the accounts.

Without that distinction, every person who owns a security in the United States in order to own it would have to be a clearing member of a clearing corporation, which is not how we would realize our financial markets.

Q. You are not aware of any conversation between anyone at Barclays, working for Barclays, and anyone at DTCC concerning any distinction between the Lehman accounts and the assets in the Lehman accounts at DTCC?

MR. HUME: Objection, asked and answered.

A. I don't have anything to add.

Q. Did it come to your attention that DTCC was of the understanding that the assets in the Lehman account were remaining with the estate?

A. It is impossible for me to understand how they could have formed that view or that they -- and I am unaware that they did form that view.

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Q. If you look, sir, at paragraph 1 of the draft before you marked as Exhibit 606, you will see the second part of that section 1, same paragraph really of that section 1, says, "As part of this closeout process, the trustee hereby authorizes DTC to accept and act upon instructions from NSCC to deliver securities from the DTC LBI account to NSCC's account," and it goes on. Do you see that sentence?

A. I do.

Q. Can you explain why the parties were providing for the trustee to exercise authority over assets in the Lehman account if those assets contractually were understood all along to belong to Barclays?

MR. MORAG: Objection, mischaracterizes his testimony. For the third time.

A. And I think you're asking me to interpret what the import of this is, because I don't accept your characterization of what this does or -- what this provision does or says.

Q. So you would --

A. I think I would decline to answer on

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the grounds that I think my interpretation of this provision would be privileged.

Q. At the time that this draft was received, did you understand that Barclays was taking -- was cherry picking or at least taking certain assets from the clearance box and not other assets, or at least that it had that option?

MR. MORAG: Objection, compound.

A. Why don't you ask the first question.

Q. Sure. What I am trying to understand is, at the time that this draft is circulated, what is your understanding of the business deal between Barclays and the estate?

A. I was not -- I was not aware -- I don't know it to be the case, sitting here today, that there were clearance box assets that Barclays had decided they didn't want.

Q. Did you understand that Barclays had the ability to either return or not take certain clearance box assets?

A. I'm not sure at that time that I had focused on the language that you showed me earlier today.

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Q. Did you raise any question with DTCC or anyone else as to why there was not any mechanism here for separating out the assets that were being taken by Barclays and the assets that Barclays did not choose to take from the DTC clearance boxes?

A. No, because at that point, I was under the impression that Barclays was taking all of the clearance box assets, which it was their ability to do or not do, as they decided at any time. I think there was a lack of -- I don't know how clearly it was understood what all of those assets were.

Q. I'll show you next a document that has been marked as Exhibit 607.

MR. HUME: How much more do you have?

And would it make sense to take a break at some point afternoon then finish?

MR. MAGUIRE: I can finish this in five minutes and that might be a better time to take a break.

Q. This is an e-mail that your colleague, Mr. Mazzuchi circulated?

A. Um-hm.

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Q. I note in this draft and the prior draft, there is a signature line for James B. Giddens as trustee for the liquidation of Lehman Brothers. And the signature line is for James B. Kobak, Jr. Do you see that?

A. Um-hm.

Q. Did you have any discussions with Mr. Kobak concerning this agreement?

A. I did not have a verbal conversation with James Kobak about this agreement, but he was provided the various drafts that were exchanged.

Q. And made comments?

A. As far as I'm aware, yes.

Q. You see Mr. Mazzuchi's cover e-mail says, "Further to Ed Rosen's discussion with Sheldon, attached is a revised draft of the recourse arrangement for the 250 million dollar purchase price. This also reflects comments from Lehman."

Did you understand that to be a reference to comments from the trustee's representatives?

A. I don't know.

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Q. Do you know whether this agreement was discussed with anyone from Weil Gotshal?

WITNESS' ATTORNEY: Are you referring to the DTC letter in general or this draft in particular?

Q. The DTC letter in general.

A. I do not recall.

Q. Do you know whether Weil was provided with any draft of the DTC letter agreement?

A. Yes, it would have been on the closing table and it may have been provided separately by Shelly Hirshorn.

Q. Other than it being on the closing table and whether Mr. Hirshorn did or did not provide it, do you though whether anyone otherwise provided either the final agreement or a draft of the DTC later agreement to anyone at Weil?

A. I don't have a recollection. They may well have been in the room. The rooms weren't closed off. They may have participated in reviewing the exchanges of draft. I just don't have a specific recollection. Again, at this time, I was in and out of the documentation,

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also working on other problems.

Q. In which room was the DTC letter agreement put together -- speaking now to Cleary and the Barclays representatives -- which room at Weil were you working in?

WITNESS' ATTORNEY: Objection, compound. It is two different questions.

A. Yeah, I don't know how to describe, there was a room on a floor and I was not located in a particular room. I jockeyed between several rooms.

Q. Where was the, speaking specifically now to the DTCC negotiations, telephone calls and the drafting, in which room did that happen?

A. That happened in a room on a different floor.

Q. Do you know what floor?

A. I believe it was the floor below the floor where the other meetings were taking place.

Q. Were there any other Lehman-related conference rooms in use on that lower floor?

A. I don't, I don't recall.

Q. Did anyone from Cleary instruct anyone

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from Weil that they were not permitted into that room?

A. No, not that I am aware.

Q. Have you -- at the beginning of Mr. Mazzuchi's e-mail, he says, "Further to Ed Rosen's discussion with Sheldon," do you know what that discussion refers to?

A. I think it refers to the same issue that's reflected in the earlier exchange of e-mail in which we were taking the view that this was a limited recourse form of credit support and not a guarantee of Barclays. This was an asset that would otherwise have been paid to the estate as part of the transaction that was being made available to secure additional credit support to DTCC and its related affiliates, and I thought that describing it as a guarantee by Barclays was not entirely accurate.

Q. OK.

MR. MAGUIRE: This is probably a good time to take a break.

(Recess)

Q. I will show you a document we have

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previously marked as Exhibit 563C. Have you ever seen that letter before?

A. Again, yes, without verifying how closely it tracks the actual agreement.

Q. If you turn, sir, to page 4, there is a sentence beginning at the first full paragraph that starts, "By Sunday night, September 21." Do you see that sentence?

A. Um-hm, yes.

Q. I give that to you as background. My question is whether on any of the Sunday night or Monday morning conversations anyone from DTCC said in words, substance that they believed that DTCC's exposure to Lehman from processing the remaining transactions was substantially less than it originally feared?

A. I think implicitly by them saying they had become comfortable with the internal review that they were doing, they would be willing to close the transaction with 250 million.

Q. So the fact that there was a meeting of the minds suggests that DTCC had become more comfortable with its exposure?

A. They may have said that we have

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continued to review this and we have gotten to that point based on the review. I don't recall specifically.

Q. Do you have any recollection of that?

MR. HUME: Objection, asked and answered.

Q. The reason I ask is because you say specifically?

A. I have an impression that that was what was conveyed, that they had gotten comfortable with the risk. But I don't have a specific recollection of a specific articulation from the calls.

Q. I'll show you a document that has previously been marked as Exhibit 156B. It is actually not entirely clear, but it is a letter from Cleary Gottlieb dated March 6, 2009. Do you know whether you have ever seen that letter before, sir?

A. I may have seen a draft of this letter. I don't have a specific recollection.

Q. My only questions, sir, are with respect to page 3 of this letter, the second full sentence on page 3, starts, "Nothing in

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<p>1 ROSEN</p> <p>2 this letter or in Exhibit B should be construed</p> <p>3 to suggest."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you have an understanding, sir, as</p> <p>7 to what that sentence means, of Mr. Kobak's</p> <p>8 letter?</p> <p>9 A. To be honest with you, I would have to</p> <p>10 look at -- I would have to read the entire</p> <p>11 letter in order to put that sentence in context.</p> <p>12 WITNESS' ATTORNEY: Maybe we could</p> <p>13 discuss this off the record and I could</p> <p>14 explain it to you.</p> <p>15 Q. Sure, that would be helpful. Let me</p> <p>16 just ask you then if you have an understanding</p> <p>17 that the securities in the Lehman -- that</p> <p>18 Barclays acquired the securities in the Lehman</p> <p>19 clearance boxes at the time of closing</p> <p>20 regardless of whether any customers had long</p> <p>21 positions in those securities?</p> <p>22 MR. HUME: I think you're asking the</p> <p>23 witness to interpret the contract when you</p> <p>24 ask that question. If you want to ask him a</p> <p>25 factual question about a discussion, that's</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 fine, but to interpret precisely which</p> <p>3 securities are covered by the clearance box</p> <p>4 provision of the clarification letter just</p> <p>5 seems like you're asking him a legal</p> <p>6 interpretation question.</p> <p>7 Q. You can answer.</p> <p>8 MR. HUME: Well, you can't answer to</p> <p>9 the extent it would reveal attorney work</p> <p>10 product analysis that we have done and I</p> <p>11 think beyond that --</p> <p>12 A. I think answering the question would</p> <p>13 call for me to interpret the contractual</p> <p>14 documents.</p> <p>15 Q. Let me leave aside the contractual</p> <p>16 documents. Just as a matter of the business</p> <p>17 deal that was negotiated, did you understand the</p> <p>18 business agreement between the parties was that</p> <p>19 Barclays was getting the assets in the clearance</p> <p>20 boxes that were not owned by customers or did</p> <p>21 you understand that Barclays was getting the</p> <p>22 assets in the clearance boxes notwithstanding</p> <p>23 whether any customer had had a long position?</p> <p>24 A. My understanding was that they were</p> <p>25 getting what was in the clearance boxes.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 Q. And that's regardless of what</p> <p>3 customers had long positions in those</p> <p>4 securities?</p> <p>5 A. It is based on there being lien-free</p> <p>6 securities.</p> <p>7 Q. So the fact that customers had long</p> <p>8 positions did not affect Barclays' rights?</p> <p>9 A. I think you're asking me to interpret</p> <p>10 the implications of those provisions in the</p> <p>11 clearance box, relating to the clearance box.</p> <p>12 Q. I'm just asking you to tell me what</p> <p>13 you just told me?</p> <p>14 A. You're asking me to interpret whether</p> <p>15 the reference to the clearance box, the extent</p> <p>16 to which it covered certain kinds of assets and</p> <p>17 that's asking me to interpret a term of the</p> <p>18 agreement.</p> <p>19 Q. Leaving aside the agreement, just the</p> <p>20 business deal, just the business deal between</p> <p>21 the parties, did you understand --</p> <p>22 A. The business deal, as far as I was</p> <p>23 aware, did not include a limitation on the</p> <p>24 clearance box assets that Barclays was getting</p> <p>25 as far as I recall.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 MR. MAGUIRE: We will mark as Exhibit</p> <p>3 626 a document Bates stamped BCI-CG 0024097</p> <p>4 through 99.</p> <p>5 (Exhibit 626, document Bates stamped</p> <p>6 BCI-CG 00024097 through 99 marked for</p> <p>7 identification, as of this date.)</p> <p>8 Q. Had you received this e-mail chain</p> <p>9 from Mr. McDaniel, sir?</p> <p>10 A. I did.</p> <p>11 Q. And you had learned at some point that</p> <p>12 there was 1 billion dollars in cash margin at</p> <p>13 the OCC?</p> <p>14 A. Could you repeat your question.</p> <p>15 Q. Yes, you learned at some point there</p> <p>16 was 1 billion dollars in cash that the OCC was</p> <p>17 holding for the accounts of LBI?</p> <p>18 A. That is in here, yes.</p> <p>19 Q. And that was in addition to government</p> <p>20 securities that were being held at JP Morgan</p> <p>21 Chase?</p> <p>22 A. It presumably is additional to any</p> <p>23 other collateral that would have been noncash.</p> <p>24 Q. And you asked Jim for more information</p> <p>25 about the 1 billion dollars?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 ROSEN</p> <p>2 both 30(b)(6) and your individual deposition.</p> <p>3 My questions go to your personal knowledge. I</p> <p>4 have sort of reversed the rules a little bit.</p> <p>5 A. I am sorry, could you repeat the</p> <p>6 question.</p> <p>7 Q. Do you have any knowledge of whether</p> <p>8 anyone on the Barclays' side of the table,</p> <p>9 Barclays or its representatives, spoke to anyone</p> <p>10 on the Lehman side of the table, Lehman or its</p> <p>11 representatives, about provisions that needed to</p> <p>12 be included in the clarification letter</p> <p>13 regarding the termination of the repo?</p> <p>14 MR. HUME: Object to the form.</p> <p>15 A. I am sorry?</p> <p>16 MR. HUME: I object to the form.</p> <p>17 Q. I think you can answer.</p> <p>18 A. I believe that there may have been</p> <p>19 conversations between the lawyers, maybe Alan</p> <p>20 Kaplan at Barclays, but I don't have personal</p> <p>21 knowledge because I was not involved in the</p> <p>22 events leading up to the notice and the</p> <p>23 clarification that was made in the clarification</p> <p>24 letter.</p> <p>25 But I assume that -- it is obvious</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 that since the provisions were ultimately</p> <p>3 included in the clarification letter, that it</p> <p>4 was conveyed in the form of the amendments to</p> <p>5 the clarification letter that reflected those</p> <p>6 provisions.</p> <p>7 Q. OK. I would like to show you -- let's</p> <p>8 mark this as our next exhibit.</p> <p>9 (Exhibit 631, document Bates stamped</p> <p>10 BCI-EX(S) 201894 through 95 marked for</p> <p>11 identification, as of this date.)</p> <p>12 Q. The document I have put before you</p> <p>13 Mr. Rosen marked as Exhibit 631 bears Bates</p> <p>14 number BCI-EX(S) 00201894 through 895.</p> <p>15 Have you seen the document before?</p> <p>16 A. Again, not parsing every word, but it</p> <p>17 looks like an e-mail that I sent.</p> <p>18 Q. And you'll see it is an e-mail from</p> <p>19 you to Josephine Wang?</p> <p>20 A. Yes.</p> <p>21 Q. I can't --</p> <p>22 A. This is what I was referring to --</p> <p>23 Q. It is?</p> <p>24 A. -- earlier in terms of the sort of the</p> <p>25 clarification of the language included in the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 order, and then we asked SIPC and, I guess it</p> <p>3 was Mike Macchiaroli now that I see this, to</p> <p>4 confirm that they wouldn't seek such a stay.</p> <p>5 Q. I can't tell from the e-mail address</p> <p>6 with whom or what is Josephine Wang affiliated.</p> <p>7 A. You can't tell that. I think she is</p> <p>8 in the legal department at SIPC.</p> <p>9 Q. And you say in this e-mail to</p> <p>10 Josephine Wang and Steven Sharbeck, Mike</p> <p>11 Macchiaroli, "Below is the language we believe</p> <p>12 to be necessary to ensure that the order is</p> <p>13 sufficiently broad to cover the relevant</p> <p>14 Barclays Capital transactions."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And below that is some proposed</p> <p>18 language and below that is a note that says,</p> <p>19 "Mike, I am trying to place us in the document,</p> <p>20 are you with me?"</p> <p>21 Where did the particular language set</p> <p>22 off in italics come from, beginning, "Exercise</p> <p>23 of any rights," and ending "September 24, 2008"?</p> <p>24 A. Probably from my colleague, Sandra</p> <p>25 Rocks.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 Q. And was this particular language shown</p> <p>3 to or discussed with, to your knowledge, anybody</p> <p>4 on the Lehman side of the table, including its</p> <p>5 business people or representatives?</p> <p>6 A. I think that certainly they would have</p> <p>7 seen the order in the proposed sale -- the sale</p> <p>8 order.</p> <p>9 Q. Well, you are a bit ahead of me. I</p> <p>10 guess I should have asked that. The order that</p> <p>11 you refer to, is that the sale order?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know if this language wound up</p> <p>14 in the sale order?</p> <p>15 A. I would have to check. I believe so,</p> <p>16 but I would have to check to confirm.</p> <p>17 Q. And in the language that you proposed</p> <p>18 in this e-mail, there is a reference to section</p> <p>19 559 of the Bankruptcy Code. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Were you familiar with the terms of</p> <p>22 Section 559 of the Bankruptcy Code when you</p> <p>23 proposed this language to the Section and SIPC?</p> <p>24 A. No, I was the transmitter.</p> <p>25 Q. Do you know if anyone at -- on the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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Barclays side of the table, including its representatives, spoke to anyone on the Lehman side of the table, including its representatives about Section 559 of the Bankruptcy Code?

A. I don't have a specific recollection of that.

WITNESS' ATTORNEY: Mr. Gaffey, let me state for the record, for what it's worth, the language, the italicized language says, "The order that the stays set forth above shall not apply to," and I just am not sure whether or not that really is referring to the sale order as opposed to some other order.

MR. GAFFEY: Neither am I. That's why I asked the question.

Q. Does what your counsel has to say refresh your recollection?

MR. HUME: I think it is the SIPC order.

A. Hang on a second. You know what, I think you're right. This predated the sale order. This is Wednesday -- this is the 17th of September, so there was a stay put into place

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and I guess this was to seek clarification of that.

Q. This refers to the SIPC order, the SIPA order?

THE WITNESS: Is that the only order?

MR. GAFFEY: Let's go off the record for a minute.

(Recess)

MR. GAFFEY: Back on the record.

Q. Mr. Rosen, do you know one way or the other what order is being referred to? I mean from memory, do you know one way or the other what order is being referred to in the document we have marked as 631, your e-mail?

A. I believe it was in anticipation of the sale order, but I'm not 100 percent confident.

Q. And how much time -- I know it was a busy week -- but how much time did you devote to conversations with the SEC about this assurance language that's set out in Exhibit 631, this issue?

A. I really don't have a clear recollection. We sent it down to them and I had

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a conversation and asked them to focus on it and then come back. I think there was -- they understood what the import of it was. And then they came back and confirmed that they wouldn't -- you know, that they agreed they wouldn't exercise that right to seek a stay. But it didn't take a lot of to'ing and fro'ing on the telephone to get there. Their people are I think quite familiar with their rights.

Q. Did there come a point that it came to your attention that the repurchase agreement was, in fact, terminated?

A. Well, it came to my attention that the clarification letter provided for a collapse instead of unwinding the repurchase agreement and then separately transferring to basically collapse that into one step. And it was part of -- the collateral that had been under that agreement was part of the securities that were being sold.

Q. My question is a little different. It goes to the timing point more than anything else, but did there come a time when you learned that the prepurchase agreement had been

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terminated? And if so, when did you find that out?

A. Well, with a consummation of the transaction, it was terminated.

Q. Do you know when the repurchase agreement was terminated?

MR. HUME: Objection, asked and answered.

A. My recollection is that the agreement was terminated as part of the consummation of the sale transaction.

Q. That would be at the closing on the 22nd?

A. Which would be at the closing.

Q. Did it come to your attention at any point prior to the closing that Barclays issued a notice of termination to Lehman?

A. At some point, I did see e-mail traffic indicating that a notice had been sent in error and then my recollection is that there was an effort to document that in the clarification letter.

Q. When did the fact of the notice come to your attention?

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<p>1 ROSEN</p> <p>2 A. I honestly don't recall.</p> <p>3 Q. Was it after the sale hearing?</p> <p>4 A. I honestly don't recall when I became</p> <p>5 aware of it to be honest with you. There is</p> <p>6 probably an e-mail somewhere about it. I don't</p> <p>7 have a date on it.</p> <p>8 MR. GAFFEY: OK. Let's mark this</p> <p>9 document as Exhibit 632.</p> <p>10 (Exhibit 632, document Bates stamped</p> <p>11 CGSH 163813 through 815 marked for</p> <p>12 identification, as of this date.)</p> <p>13 Q. I have put before you, Mr. Rosen, what</p> <p>14 has been marked as Exhibit 632 document bearing</p> <p>15 Bates number CGSH 00163813 through 815. Take a</p> <p>16 look at the document, please, sufficient to tell</p> <p>17 me whether you have seen it before.</p> <p>18 A. Yes, it looks like the e-mail</p> <p>19 correspondence to which I was a party.</p> <p>20 Q. Does this e-mail constitute the</p> <p>21 assurance that had been requested from the SEC?</p> <p>22 A. Yeah, I believe this is.</p> <p>23 Q. And had you spoken with Alastaire</p> <p>24 Bambach about the topic?</p> <p>25 A. I don't recall. It is possible that</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 he -- that I did or that he was on the phone</p> <p>3 when I spoke to someone regarding it. I</p> <p>4 honestly don't have a clear recollection. There</p> <p>5 was so many conversations with the SEC.</p> <p>6 Q. And you asked Alastaire in the e-mail</p> <p>7 at the top of the chain, an e-mail dated</p> <p>8 September 18, 2008 at the time of 4:01 p.m. -- I</p> <p>9 beg your pardon, the time of 3:59 p.m.</p> <p>10 Alastaire, "Is this comfort something that we</p> <p>11 may share with others who may have an interest."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Who were the others you are referring</p> <p>15 to?</p> <p>16 A. I'm looking at that and I don't recall</p> <p>17 specifically whether this was sort of just a</p> <p>18 general, abstract question or whether I had</p> <p>19 somebody in mind. I honestly don't recall</p> <p>20 sitting here today.</p> <p>21 Q. And did you share this comfort with</p> <p>22 others?</p> <p>23 A. I think I probably shared it with the</p> <p>24 client certainly.</p> <p>25 Q. Did you share it with anybody at Weil</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 Gotshal?</p> <p>3 A. I don't recall providing it directly</p> <p>4 to Weil Gotshal.</p> <p>5 Q. Do you know if it was provided</p> <p>6 indirectly to Weil Gotshal?</p> <p>7 A. I don't have a recollection about</p> <p>8 that. It may have been. I do not. It may have</p> <p>9 been that I did this because the client at</p> <p>10 Barclays wanted to forward it on and they asked</p> <p>11 me whether they could. But I just -- but</p> <p>12 honestly, this is not a keen recollection.</p> <p>13 Q. Do you have any knowledge, direct or</p> <p>14 indirect, as to whether this comfort language</p> <p>15 was shared with Lehman or Weil Gotshal?</p> <p>16 A. I really don't recall.</p> <p>17 Q. You referred a few times today in</p> <p>18 various contexts to -- you can put the document</p> <p>19 aside. To various circumstances where -- and</p> <p>20 this is, again, not a quote, but you talked</p> <p>21 about jeopardy to the deal closing by Monday the</p> <p>22 22nd, that's a prospect that you have talked</p> <p>23 about a few times today. Was there a drop-dead</p> <p>24 date for closing?</p> <p>25 A. No, there was just a perception that</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 if it didn't close by Monday, there could be</p> <p>3 developments in the marketplace which might have</p> <p>4 complicated or prevented the deal from getting</p> <p>5 done. I don't think it was an ultimatum.</p> <p>6 I think people wanted to get the deal</p> <p>7 done, but I think there was a concern that</p> <p>8 letting another business cycle go by was just --</p> <p>9 because we didn't know what was going to happen.</p> <p>10 I think this was the weekend where we had</p> <p>11 learned very late Sunday night that, you know,</p> <p>12 Morgan Stanley and Goldman Sachs had quite</p> <p>13 expeditiously become banks and people were</p> <p>14 worried and the hurry to do that was no doubt in</p> <p>15 part due to concerns.</p> <p>16 So I wouldn't say that it was a drop</p> <p>17 dead or an ultimatum or anything like that. It</p> <p>18 was that people realized it became more</p> <p>19 complicated and there was more noise that could</p> <p>20 interfere with the transaction the more time</p> <p>21 that elapsed. So we all, I think internally at</p> <p>22 Cleary regarded it as, put it this way, if the</p> <p>23 deal wasn't ready to close on Monday, we didn't</p> <p>24 want to be the ones responsible for it not being</p> <p>25 ready to close on Monday morning, so we took it</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 ROSEN</p> <p>2 seriously.</p> <p>3 Q. That issue aside, the deal could have</p> <p>4 closed on Tuesday?</p> <p>5 A. Theoretically, it could have closed on</p> <p>6 Tuesday if things hadn't intervened. It was</p> <p>7 more the risks that were associated with not</p> <p>8 closing expeditiously that were the concerns.</p> <p>9 You had to remember, the markets were very</p> <p>10 volatile and there were assets whose valuation</p> <p>11 was the source of considerable uncertainty and</p> <p>12 concern.</p> <p>13 MR. GAFFEY: I don't have anything</p> <p>14 further. Thank you for your time.</p> <p>15 MR. DAKIS: The committee has no</p> <p>16 questions.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 (Time Noted: 4:35 p.m.)</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 EDWARD J. ROSEN</p> <p>23</p> <p>24 Subscribed and sworn to</p> <p>25 before me this EDWARD J. ROSEN day</p> <p>of February, 2010.</p> <p>_____</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 INDEX:</p> <p>3 WITNESS EXAM BY: PAGE:</p> <p>4 E. Rosen Mr. Maguire 6</p> <p>5 Mr. Gaffey 202</p> <p>6 EXHIBITS</p> <p>7 Exhibit No. Marked</p> <p>8 Exhibit 622 declaration of Edward J. Rosen 8</p> <p>9 Exhibit 623 document Bates stamped 120</p> <p>10 CGSH0002699 through 700</p> <p>11 Exhibit 624 document Bates stamped DTCC 122</p> <p>12 00126 through 00198</p> <p>13 Exhibit 625 document Bates stamped DTCC 152</p> <p>14 00359 through 361</p> <p>15 Exhibit 626 document Bates stamped BCI-CG 175</p> <p>16 00024097 through 99</p> <p>17 Exhibit 627 document Bates stamped CGSH 181</p> <p>18 0034491 through 92</p> <p>19 Exhibit 628 document Bates stamped 183</p> <p>20 OCC36408 through 409</p> <p>21 Exhibit 629 document Bates stamped OCC 186</p> <p>22 0036472 through 36473</p> <p>23 Exhibit 630 document Bates stamped OCC 195</p> <p>24 0036482 through 483</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 ROSEN</p> <p>2 EXHIBITS</p> <p>3 Exhibit No. Marked</p> <p>4 Exhibit 631 document Bates stamped 213</p> <p>5 BCI-EX(S) 201894 through 95</p> <p>6 Exhibit 632 document Bates stamped CGSH 220</p> <p>7 163813 through 815</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 ROSEN</p> <p>2 CERTIFICATE</p> <p>3 STATE OF NEW YORK)</p> <p>4)ss:</p> <p>5 COUNTY OF NEW YORK)</p> <p>6 I, MARY F. BOWMAN, a Registered</p> <p>7 Professional Reporter, Certified Realtime</p> <p>8 Reporter, and Notary Public within and for</p> <p>9 the State of New York, do hereby certify:</p> <p>10 That EDWARD J. ROSEN, the witness</p> <p>11 whose deposition is hereinbefore set forth,</p> <p>12 was duly sworn by me and that such</p> <p>13 deposition is a true record of the testimony</p> <p>14 given by such witness.</p> <p>15 I further certify that I am not</p> <p>16 related to any of the parties to this action</p> <p>17 by blood or marriage and that I am in no way</p> <p>18 interested in the outcome of this matter.</p> <p>19 In witness whereof, I have hereunto</p> <p>20 set my hand this 19th day of February, 2010.</p> <p>21</p> <p>22</p> <p>23 _____</p> <p>24 MARY F. BOWMAN, RPR, CRR</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)
HOLDINGS, INC., et al., (Jointly Administered)

Debtors.

-----x

DEPOSITION OF SEAN TEAGUE

New York, New York

June 30, 2010

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 31617

Page 6

1 Teague
2 also is Elizabeth Davis and Marc Vellrath
3 from FSG.
4 BY MR. TAMBE:
5 Q. Mr. Teague, you're currently employed
6 by Barclays, is that right?
7 A. That's correct.
8 Q. Which Barclays entity employs you?
9 A. Barclays Capital.
10 Q. How long have you been with Barclays
11 Capital?
12 A. Approximately five years.
13 Q. Back to 2005?
14 A. Yes.
15 Q. And what's your current position with
16 Barclays Capital?
17 A. I perform independent valuations.
18 Q. You perform valuations?
19 A. Correct. So I perform independent
20 valuations. Part of the IVC team.
21 Q. And do you have a title?
22 A. Not specifically. I manage the Fixed
23 Income and Credit Price testing for the
24 Americas.
25 Q. If you could just keep your voice up

Page 8

1 Teague
2 Q. When you were performing the trading
3 function for approximately a year, what types of
4 products did you trade? What markets did you
5 trade in?
6 A. Credit correlation.
7 Q. Credit correlation.
8 Any other type of trading while at
9 Commerce Bank?
10 A. No, just hedging for the credit
11 correlation portfolio.
12 Q. Prior to Commerce Bank, where did you
13 work?
14 A. I worked at Deutsche Bank/Bankers
15 Trust for approximately seven years, performing
16 various roles, including the majority, probably
17 five of those seven years were in Product
18 Control for Fixed Income Credit products, and
19 two of those years were performing documentation
20 for trades. So trade -- trade docs.
21 Q. And the documentation for trades, what
22 types of products were you providing
23 documentation for?
24 A. Majority would be rates and credit.
25 Q. Rates and credit. And prior to

Page 7

1 Teague
2 because I'm having some trouble hearing you and
3 I know the court reporter might have some
4 trouble hearing you as well. And there's folks
5 all the way at the end of the table, so it would
6 help all of us.
7 I've seen this documents which
8 identify you as a director of Fixed Income and
9 Credit Price Testing. Is that also -- is that
10 an accurate description of your title?
11 A. Yes.
12 Q. And you were, in 2008 and 2009, you
13 had the same position?
14 A. That's correct.
15 Q. Before you got to Barclays in 2005, if
16 you could briefly describe your employment
17 background. Where else did you work?
18 A. Previous to Barclays, I worked for
19 three years at Commerce Bank. I had multiple
20 roles at the firm. I worked in the middle
21 office function for approximately a year, I
22 worked in the trading function for approximately
23 a year, and also in what's called Alternative
24 Investment Strategies, performing due diligence
25 on hedge funds for approximately a year.

Page 9

1 Teague
2 Deutsche Bank?
3 A. Short period of time consulting at
4 HSBC as a rates analyst as well as ISDA
5 documentation, and a short stint as a consultant
6 at Barclays Capital, also in documentation. But
7 that was not working for the firm. I was a
8 Consultant.
9 Q. And when you were consulting, who were
10 you employed by?
11 A. I can't recollect. I do not
12 recollect. It was ten years ago.
13 Q. If you could maybe go back to your
14 educational background. College, when did you
15 graduate?
16 A. I graduated in '94.
17 Q. From where?
18 A. Binghamton University.
19 Q. What degree?
20 A. A B.A.
21 Q. In?
22 A. Political science and a minor in
23 economics.
24 Q. I haven't done all the math in terms
25 of your prior experience, but when you finished

3 (Pages 6 to 9)

1 Teague
2 your BA is when you began your consulting work,
3 or did you have further education?
4 A. Shortly after finishing is when I
5 began the consulting work.
6 Q. And fair to say that you don't have
7 any postgraduate degrees?
8 A. It's fair to say that.
9 Q. So the B.A. was your last degree?
10 A. Correct.
11 Q. At any time have you held any
12 registrations or licenses in the securities
13 industry?
14 A. Yes, Series 7 and 63.
15 Q. 63?
16 A. Yes.
17 Q. Anything else?
18 A. I have the -- pause for a moment. The
19 FRM, which is Financial Risk Manager Certificate
20 as well.
21 Q. Are you current in your Series 7 and
22 63?
23 A. Yes.
24 Q. Going back to the beginning of your
25 work at Barclays, starting in 2005, what

1 Teague
2 on the rates side reporting in to me, and on the
3 credit side approximately, approximately five
4 people on the credit side -- six people, I
5 believe, actually, on the credit side.
6 Q. I have placed before you a document
7 that was previously identified as Exhibit 799.
8 If you would just take a moment to review that
9 document. Let me know when you're done. I'll
10 ask you some questions about it.
11 A. Certainly.
12 (Document review.)
13 A. Okay.
14 Q. Have you seen this document before
15 today?
16 A. Yes, I have.
17 Q. Were you involved in preparing this
18 document?
19 A. Yes, I was.
20 Q. What role did you play in the
21 preparation of this document?
22 A. I helped provide supporting
23 information for my team.
24 Q. And what is your understanding as to
25 why this document had been prepared?

1 Teague
2 department or group in Barclays did you join in
3 2005?
4 A. I joined the same team, the IVC, and
5 at the time I was managing secondary ABS
6 valuations.
7 Q. And starting in the summer of 2008, so
8 prior to the Lehman bankruptcy, July/August of
9 2008, what was your role at Barclays?
10 A. Same as today.
11 Q. So you were part of the IVC team. You
12 were responsible for fixed income and credit; is
13 that right?
14 A. Prior to the acquisition, I had the
15 same role as I have today, fixed income and
16 credit.
17 Q. If you could just describe for me
18 briefly, as of the summer of 2008, what the
19 organizational structure was for the IVC group.
20 To whom did you report? Who report arid to you?
21 If you could just describe the team.
22 A. I reported to Marcus Morton. My team
23 at the time, I can't recollect all the team
24 members, approximately four people on the rates
25 side. I'll just do it in my head. Five people

1 Teague
2 A. I don't recollect.
3 Q. Well, is it your understanding you
4 were asked to prepare this document or to
5 provide information to prepare this document for
6 purposes of this litigation?
7 A. I believe -- I had drafted this at one
8 point in time for the head of Fixed Income for
9 my portion. So I don't recollect if that data
10 was then provided specifically for the purposes
11 of this litigation.
12 Q. And you said the head of Fixed Income.
13 Who are you referring to?
14 A. Eric Bommensath.
15 Q. And is this a document that, as far as
16 you know, is used in the day-to-day business of
17 Barclays?
18 A. No, it is not.
19 Q. It is not used?
20 A. Not in the day-to-day business of the
21 firm.
22 Q. Okay. Now, going back to your
23 description of the people who reported to you,
24 if you could look through this and help me
25 identify the people you were referring to. You

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<p>1 Teague</p> <p>2 say four people in rates, five people maybe on</p> <p>3 credit.</p> <p>4 Are those people listed in this</p> <p>5 document, Exhibit 799?</p> <p>6 A. If we go to the document with "FI</p> <p>7 Rates" on the top.</p> <p>8 Q. Third page in. Okay.</p> <p>9 A. Grant Rusk at the time was overseeing</p> <p>10 the fixed income rates valuations. Alessandra</p> <p>11 Riccardi oversaw the fixed income options</p> <p>12 portion, the fixed income rates world. Elly Po,</p> <p>13 as stated here, was involved in the RMBS</p> <p>14 Treasuries and agencies as well as the munis.</p> <p>15 Kevin McAndrew was involved in the rates as well</p> <p>16 as some of the agency valuation.</p> <p>17 Pavan was not involved in the Lehman</p> <p>18 opening balance sheet. He was an ex-Lehman</p> <p>19 employee who joined with Barclays after the</p> <p>20 acquisition. Neither was Rob or Qiron.</p> <p>21 Q. And other than Grant, Alessandra, Elly</p> <p>22 and Kevin, were there any other folks back at</p> <p>23 the time and during the time of the acquisition</p> <p>24 who were in this Fixed Income/Rates division?</p> <p>25 A. There was Mark Hollander, who was no</p>	<p>1 Teague</p> <p>2 longer with the firm shortly thereafter. He was</p> <p>3 not involved. And another individual Sam, I</p> <p>4 can't recollect his last name offhand, who was</p> <p>5 not involved in the Lehman acquisition, who is</p> <p>6 no longer with the firm shortly after the</p> <p>7 acquisition.</p> <p>8 Q. Okay. And then moving on to Fixed</p> <p>9 Income Credit at the bottom of that third page</p> <p>10 over onto the fourth page, how many of those --</p> <p>11 which of those folks were involved in the Lehman</p> <p>12 acquisition back in the fall of 2008 onwards?</p> <p>13 A. Kevin Jhea is how you state his name,</p> <p>14 was managing FI Credit at the time of the Lehman</p> <p>15 acquisition. David Wei, managed the correlation</p> <p>16 aspects of the FI Credit world. Heidi Su's main</p> <p>17 role was Emerging Market Independent Valuations</p> <p>18 at the time. Amine came on through the Lehman</p> <p>19 acquisition. He was not part of the overall</p> <p>20 analysis of the IVC of the opening balance</p> <p>21 sheet.</p> <p>22 Ilya Riskin was a member of the team,</p> <p>23 still is, but was not involved in the Lehman</p> <p>24 acquisition. Mohemmed Khan was involved in</p> <p>25 valuations of the corporates for the Lehman</p>
Page 16	Page 17
<p>1 Teague</p> <p>2 acquisition.</p> <p>3 Ethan Zheng, analyst, he was not</p> <p>4 involved in the Lehman opening balance sheet</p> <p>5 valuation, and Kartik Kothari was in the credit</p> <p>6 area, mainly focusing on CDS and corporate</p> <p>7 bonds. He was not involved in the Lehman</p> <p>8 opening balance sheet valuation.</p> <p>9 Q. There's one name over on the last page</p> <p>10 of this exhibit, Dara Mao?</p> <p>11 A. Oh, apologies. Dara came on through</p> <p>12 Lehman. She was not involved in the</p> <p>13 acquisition.</p> <p>14 Q. In preparing this document or</p> <p>15 providing information for the preparation of</p> <p>16 this document, Exhibit 799, do you recall</p> <p>17 whether it was sometime this year that you</p> <p>18 provided that information or was it prior to</p> <p>19 this year?</p> <p>20 A. I believe it would be prior to this</p> <p>21 year. Again, this is based on information that</p> <p>22 I provided much earlier to senior management and</p> <p>23 on a very unrelated note. It was just something</p> <p>24 I provided to the head of the business on the</p> <p>25 trading side who wanted to understand better the</p>	<p>1 Teague</p> <p>2 people within my team, and that was what I used</p> <p>3 to update this document. But this document to</p> <p>4 me must have been done last year. I don't</p> <p>5 recall when this was done.</p> <p>6 Q. Going back to the week of September</p> <p>7 15, 2008, if you could briefly describe the role</p> <p>8 or the duties that you played, and I want to</p> <p>9 just focus on the time period the 15th of</p> <p>10 September through the 22nd of September, so that</p> <p>11 first week, roughly, what was -- what role, if</p> <p>12 any, did you play in connection with the Lehman</p> <p>13 transaction or the contemplated, the one that</p> <p>14 was finally executed, what were you doing in</p> <p>15 connection with Lehman that week?</p> <p>16 MR. HUME: Object to the form of the</p> <p>17 question.</p> <p>18 Q. Do you understand my question?</p> <p>19 A. I guess what was my specific role in</p> <p>20 regards to the Lehman transaction?</p> <p>21 Q. Yes, during that week.</p> <p>22 A. I guess the 15th was the -- was that</p> <p>23 the weekend before?</p> <p>24 Q. 15th was the day that Lehman filed for</p> <p>25 bankruptcy. It was a Monday.</p>

Teague

A. That was a Monday. So my role that week, after they had -- after Monday, the first objective was to perform independent valuations for any derivative transactions we had with the firm. Barclays was at risk in any derivative transactions that we had. We had to make sure that they were valued correctly.

So we were focusing in interest rate swaps and credit derivatives within my team where Lehman would have been the counterparty. I was consolidating that data, and then, by the end of the week, my function turned more into focus on working with Operations to determine the assets which were going to be brought onboard I believe we had the Friday and then the Monday.

Q. In the first part of your answer you talked about providing some support in connection with derivatives positions where Lehman was the counterparty. Those were not transactions or assets that were being acquired as part of the transaction; those were deals on with Lehman, existing deals?

A. That is correct.

Teague

A. I was involved in mainly in what I would consider reconciliation view, trying to understand what data we would be receiving. The Operations team would be coordinating with the Lehman team from the Lehman's Operations team to determine what is -- what was expected to be delivered, and I was working with them as well as certain members of Product Control, for instance, Steve Calick, who would have been working from an equities perspective to see what assets would be moving over to Barclays.

So the majority of the analysis, of course, was within the Operations function. Our role was just to try to get, gain a deeper understanding of what was happening.

Q. And this role about getting a deeper understanding of what was happening, was there a point in time where sort of that role ended and you reverted to a Product Control price, independent price verification role?

A. In certain aspects it was just intertwined. If you didn't know what you were supposed to value, you couldn't really perform a valuation. So that's why I was involved, was to

Teague

Q. The second part of your answer in terms of your role, where you got involved with Operations to provide some support around the assets that were coming over from Lehman as part of the purchase transaction, describe for me who it was that got you involved in that. Who asked you to become involved? Who from Operations?

A. Marcus Morton and James Walker within Product Control asked me to get a better understanding of what was happening from an operations perspective.

Q. Now, Mr. Walker, where does he fit into the Product Control or Independent Valuation Division or structure of the bank?

A. I believe at the time he was CFO. I can't remember his exact title.

Q. So he would be someone that Mr. Morton would report up to?

A. Yes.

Q. Were the others from Product Control and from Independent Valuation who would be working with you, were you leading that effort on the part -- on the side of Product Control and Independent Valuation?

Teague

ensure I understood, you know, what paper, what securities were being delivered so we could value them.

Q. And was it your understanding that your role would be initially to sort of identify what's coming over, and ultimately you would be part of the team that would be valuing what had come over?

A. Yes.

Q. You said Mr. Calick played a role with respect to equities. Other than you and Mr. Calick, were there other people from Price Control or IVC who had other asset classes that they were responsible for cracking and reconciling?

A. Well, to clarify, Steve Calick was in Product Control outside of IVC. His function was just more so to, again, gain an understanding of what was coming on in discussions with Operations.

Within IVC, you know, I can't recollect if Rich Landreman was heavily involved, but he was aware that, you know, we were getting assets delivered.

Teague

Q. And how would you sort of describe where Mr. Landreman fits into the hierarchy within Product Control and IVC?

A. Mr. Landreman works in Independent Valuation Control. He also reports in to Marcus Morton and his function, as per here, is to review the -- to perform independent valuations for securitized products.

Q. I just want to be clear on sort of the distinction between Product Control and IVC.

A. Certainly.

Q. Can you just describe what the distinction is and how those two divisions or teams work together or separately?

A. Independent Valuation and Control is essentially a subset of the Product Control world. Product Control, which I'm referring to a separate team, would be considered the daily P&L function for the firm. They would perform the P&L analysis of the books and records of the firm, of the marked to market assets for the books that I would be overseeing. They would, you know, determine what the -- what mark to market happened on a daily basis and how that

Teague

Group, play in determining those values?

A. They would not have played a role in that valuation aspect.

Q. Who would have determined those values or who did determine those values on the acquisition balance sheet?

A. That was chairmaned by the Independent Valuation Group. Some of the marks were chairmaned by the trading desk. It's all product-specific.

Q. And you're familiar with the acquisition balance sheet, correct?

A. Yes, I am.

Q. And you helped prepare it?

A. Yes, I have.

Q. And you could, by looking at the acquisition balance sheet and the underlying data, identify where prices were provided by trading desks, where prices were the result of independent price testing, et cetera? Could you do that?

MR. HUME: Object to the form.

Q. Do you understand the question? Do you want it read back?

Teague

P&L explain works for the firm's earnings and losses.

Q. All right. So you described what the P&L -- what the Product Control Group function is. And what is it that you do differently or what is it that IVC does differently from Product Control Group?

A. IVC's function is more so to independently value those assets that are on the books and records to ensure that positions are properly marked to market.

Q. Well, are you doing something more or differently than what the Product Control Group does?

A. To clarify, we would be analyzing the pricing of assets, cash and derivatives, while they would be -- function more of an accounting role of reporting the daily P&L related to those assets.

Q. When we get to the acquisition balance sheet that was prepared by Barclays for the Lehman transaction, the valuations that appear there for the trading portfolio that was acquired, what role did PCG, Product Control

Teague

A. I can answer for the products that I covered.

Q. Okay. What products did you cover?

A. The rates and credit products within the Lehman opening balance sheet, which would be corporates, emerging markets, munis, and agencies as well as some of the securitized products.

Q. So you covered Pine, correct?

A. That's correct.

Q. You covered Giants Stadium?

A. That's correct.

Q. When you say agencies, what types of securities would you include -- are included within the agencies that you covered?

A. It would be the agency corps.

Q. Just roughly, by dollar value or percentage, what percentage of the trading portfolio acquired by Barclays is covered by you and your analysis?

A. Approximately a quarter.

Q. One-quarter by CUSIP or by value?

A. I believe by market value.

Q. When you say market value, you mean

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<p>1 Teague</p> <p>2 the value ascribed by Barclays to those assets?</p> <p>3 A. That is correct.</p> <p>4 Q. So you got a quarter by market value.</p> <p>5 Who is covered -- who else has covered the rest</p> <p>6 of it?</p> <p>7 A. It would be Rich Landreman.</p> <p>8 Q. And what would he have covered?</p> <p>9 A. The ABS valuations, all agencies</p> <p>10 outside of the agency corporates, and for the</p> <p>11 equity side, that would be Mark Washtell.</p> <p>12 Q. Any other asset classes that were</p> <p>13 covered by others other than the three of you,</p> <p>14 you, Rich and Mark?</p> <p>15 A. And for any valuations where the</p> <p>16 trading data was utilized and reviewed by PwC, I</p> <p>17 don't recollect who the proper contact would be.</p> <p>18 Q. For those valuations where trading</p> <p>19 data was utilized and you say reviewed by PwC,</p> <p>20 what types of assets were those?</p> <p>21 A. I believe those were the CDOs.</p> <p>22 Q. Do you have any particular CDO name by</p> <p>23 way of example that comes to mind, any</p> <p>24 particular names?</p> <p>25 A. No, I do not.</p>	<p>1 Teague</p> <p>2 Q. By dollar volume or CUSIPs, any sense</p> <p>3 of the magnitude of the number of the valuations</p> <p>4 that fall into this bucket where trading data</p> <p>5 was used?</p> <p>6 A. No, I do not.</p> <p>7 Q. The assets that were -- that are</p> <p>8 identified in some documents as PMTG assets, who</p> <p>9 covered those?</p> <p>10 A. I believe that the majority of it</p> <p>11 would have been Rich Landreman.</p> <p>12 MR. HUME: Can I just ask, Jay, this</p> <p>13 document you showed earlier, 799B?</p> <p>14 MR. TAMBE: Yes.</p> <p>15 MR. HUME: That's a deposition exhibit</p> <p>16 number?</p> <p>17 MR. TAMBE: That's a deposition</p> <p>18 exhibit number.</p> <p>19 MR. HUME: So it came in in a prior</p> <p>20 deposition?</p> <p>21 MR. TAMBE: Yes.</p> <p>22 Q. Sir, I've had placed before you a</p> <p>23 document marked Exhibit 133. We'll refer to it</p> <p>24 at least here as Exhibit 133. It also carries a</p> <p>25 movants trial exhibit number. It's a two-page</p>
Page 28	Page 29
<p>1 Teague</p> <p>2 document. My question to you is simply is do</p> <p>3 you recognize this document?</p> <p>4 A. No, I do not.</p> <p>5 Q. Turning to the first page of the</p> <p>6 document, Exhibit 133, you'll see there's a</p> <p>7 couple e-mails there. The one at the bottom is</p> <p>8 from Jasen Yang to Patrick Clackson, do you see</p> <p>9 that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know Mr. Yang?</p> <p>12 A. He works on the trading side.</p> <p>13 Q. Is Mr. Yang someone that you had</p> <p>14 interactions with in connection with the Lehman</p> <p>15 acquisition?</p> <p>16 A. Yes.</p> <p>17 MR. HUME: Objection to the form.</p> <p>18 Q. And what was the nature of your</p> <p>19 interaction with Mr. Yang on the Lehman</p> <p>20 acquisition?</p> <p>21 MR. HUME: Object to the form.</p> <p>22 A. Mr. Yang reviewed the portfolio from</p> <p>23 the perspective of the trading desk of what was</p> <p>24 going to be acquired, and his team was involved</p> <p>25 in the CDO valuation.</p>	<p>1 Teague</p> <p>2 Q. And when you say the "CDO valuation,"</p> <p>3 is that again those trader valuations that you</p> <p>4 referenced earlier that were provided to PwC and</p> <p>5 reviewed by PwC?</p> <p>6 A. Yes.</p> <p>7 Q. You also see in Mr. Yang's e-mail,</p> <p>8 that's an e-mail to Patrick Clackson. Who is</p> <p>9 Mr. Clackson?</p> <p>10 A. Patrick I believe is the CFO.</p> <p>11 Q. Is Mr. Clackson someone that you</p> <p>12 interacted with in connection with the Lehman</p> <p>13 acquisition?</p> <p>14 MR. HUME: Objection. Vague and</p> <p>15 ambiguous.</p> <p>16 A. Any involvement with Patrick was, the</p> <p>17 majority of it was really with Marcus Morton.</p> <p>18 Q. So you would not have been directly</p> <p>19 dealing with Mr. Clackson; is that right?</p> <p>20 A. No.</p> <p>21 Q. How about Stephen King, was that</p> <p>22 someone that you dealt with directly in</p> <p>23 connection with the Lehman acquisition?</p> <p>24 A. No. I've been on phone calls with</p> <p>25 Stephen King, but I did not deal with him</p>

1 Teague
2 directly.
3 Q. And were you on phone calls with
4 Stephen King with respect to the Lehman
5 acquisition?
6 A. I have been on phone calls with him
7 regarding the Lehman acquisition, but I have not
8 had any, you know, direct phone calls with
9 Stephen King where Stephen and I, you know,
10 would discuss the Lehman acquisition. It was
11 more conference calls where we were both on the
12 same phone.
13 Q. Describe for me briefly the kind of
14 calls you have been on with Stephen King in
15 connection with the Lehman acquisition.
16 A. Just discussions on what -- what
17 valuations we were assigning and getting --
18 trying to get an understanding as well as how
19 the CDO valuations performed by the desk. We
20 ran our own independent valuations which were
21 also provided to Product -- to PwC.
22 So mostly an understanding of if there
23 are aspects of structured deals where we needed
24 more information such that if they had any
25 Trustee reports, things of that nature.

1 Teague
2 James Walker, and just Jasen Yang, potentially.
3 But again, those conversations were on the
4 assets that were coming onboard.
5 Q. The assets coming onboard from Lehman?
6 A. Correct.
7 Q. And certain numbers of those assets
8 were being assigned to trading desks, correct?
9 A. Yes, at the time.
10 Q. And those trading desks would have
11 been run by people like Stephen King and others?
12 A. Yes.
13 Q. He was the trader, correct?
14 A. Correct.
15 Q. Do you recall any conversations where
16 Mr. King expressed a different point of view on
17 valuations than the one that you and your team
18 were expressing?
19 MR. HUME: Objection. Lacks
20 foundation. He said they didn't discuss
21 valuations.
22 A. The context of what was discussed was
23 mostly, again, in the context not of the
24 valuations, it was really in the context of the
25 positions themselves and how they were going to

1 Teague
2 Q. Did you have any conversations with
3 Mr. King in or around the time of the
4 acquisition about the valuation of specific
5 assets that were being acquired from Lehman?
6 A. No.
7 MR. HUME: Objection. Vague.
8 A. No, I did not.
9 Q. Do you recall any interactions with
10 Mr. King in the time period immediately after
11 the acquisition, so late September, early
12 October 2008?
13 A. Yes. The majority of the
14 conversations were in regard to the acquisition
15 itself and what had settled and any issues that
16 were outstanding mostly from an operational
17 perspective.
18 Q. In one your previous answers you said
19 that there was some discussion about valuations.
20 That was a topic discussed in these conference
21 calls where you were involved and Mr. King was
22 involved.
23 Who else was involved in those
24 conversations?
25 A. I don't recollect. Marcus Morton,

1 Teague
2 get booked onto the balance sheet, not the
3 valuations of the assets coming onboard.
4 Q. Were there any discussions, as you
5 recall, with Mr. King where Mr. King expressed
6 disagreement with the valuations that were
7 prepared by you and your team?
8 A. Any discussions of that nature were
9 more to deal with getting a deeper understanding
10 of the assets themselves, again such as the CDOs
11 to obtain better market data.
12 Q. Okay. I guess I want to get a better
13 understanding of what you mean by that. There
14 were discussions where Mr. King expressed a
15 disagreement over the value being ascribed by
16 you and your team to an asset or classes of
17 assets?
18 A. More specifically, to an asset. If an
19 asset valuation was performed where we didn't
20 have full market data, there was times where the
21 trading desk would provide us additional
22 information, such as if there were aspects of a,
23 you know, of a security that they had a better
24 understanding of.
25 So that was, again, going back to the

<p style="text-align: right;">Page 34</p> <p>1 Teague</p> <p>2 CDOs, more so the CDOs were valued by the desk.</p> <p>3 We performed a secondary analysis, which PwC</p> <p>4 also incorporated into their overall view. In</p> <p>5 performing that analysis, Stephen King and Jasen</p> <p>6 would provide us information if we didn't know</p> <p>7 fully every aspect of the waterfall of the CDO.</p> <p>8 Q. I want to make sure I'm not</p> <p>9 misunderstanding your answer.</p> <p>10 A. Okay.</p> <p>11 Q. I understand and appreciate your</p> <p>12 telling me that when you needed information to</p> <p>13 understand how to value a particular product,</p> <p>14 you might have asked Mr. Yang and Mr. King to</p> <p>15 provide information.</p> <p>16 My question is a very specific one:</p> <p>17 Do you recall any conversations on these</p> <p>18 conference calls where Mr. King participated and</p> <p>19 you were on these conference calls where Mr.</p> <p>20 King expressed disagreement with a value that</p> <p>21 you and your team were placing on any asset --</p> <p>22 MR. HUME: Objection.</p> <p>23 Q. -- in connection with the Lehman</p> <p>24 acquisition?</p> <p>25 MR. HUME: Objection. Asked and</p>	<p style="text-align: right;">Page 35</p> <p>1 Teague</p> <p>2 answered and vague and ambiguous.</p> <p>3 A. The desk had their view of what the</p> <p>4 portfolio was worth. Independent Valuations had</p> <p>5 their view of what the portfolio was worth.</p> <p>6 Q. So you had different views as to the</p> <p>7 valuation; is that correct?</p> <p>8 A. From a high level perspective,</p> <p>9 everyone will have a different methodology.</p> <p>10 Q. Again, I'm not talking about everyone.</p> <p>11 I'm talking about Mr. King specifically and Mr.</p> <p>12 Yang. He was working with Mr. King on this.</p> <p>13 If I understand your last answer, Mr.</p> <p>14 King expressed a different view on valuation</p> <p>15 than that being expressed by you and your team</p> <p>16 with respect to at least some of the assets that</p> <p>17 you were valuing in the Lehman acquisition; is</p> <p>18 that correct?</p> <p>19 A. Yes, that can happen.</p> <p>20 Q. These weren't pleasant conversations</p> <p>21 with Mr. King, were they, sir? These were</p> <p>22 heated conversations you had with Mr. King?</p> <p>23 MR. HUME: Objection. Vague and</p> <p>24 ambiguous.</p> <p>25 A. I wouldn't say that. I wouldn't agree</p>
<p style="text-align: right;">Page 36</p> <p>1 Teague</p> <p>2 with that.</p> <p>3 Q. The value that you put on these assets</p> <p>4 or that the bank puts on these assets, they</p> <p>5 ultimately would affect the P&L from Mr. King</p> <p>6 and his desk, correct?</p> <p>7 A. I wouldn't know the specifics of how</p> <p>8 that aspect of the firm works, sir.</p> <p>9 Q. But the decisions that you make on</p> <p>10 valuation can have an impact on the trader's</p> <p>11 P&L, correct?</p> <p>12 A. I wouldn't have known the specifics of</p> <p>13 how the trader's P&L was going to drive their</p> <p>14 earnings.</p> <p>15 Q. I'm not asking for the specifics. I'm</p> <p>16 asking for the general -- there is a connection</p> <p>17 between what you do and what happens to the</p> <p>18 amount of money the trader takes home, correct?</p> <p>19 A. Correct. But conceptually, this was</p> <p>20 an acquisition more so than a trading book that</p> <p>21 was managed by a trader that they had acquired</p> <p>22 through the regular course of actions. I</p> <p>23 wouldn't know how the trader's income was going</p> <p>24 to be derived through this acquisition.</p> <p>25 Q. Well, was that a topic of discussion,</p>	<p style="text-align: right;">Page 37</p> <p>1 Teague</p> <p>2 as to how the trader's income would be derived</p> <p>3 with respect to the assets acquired through the</p> <p>4 acquisition?</p> <p>5 A. I would not have been involved in</p> <p>6 anything at that level.</p> <p>7 Q. Were you aware that that was a topic</p> <p>8 of discussion?</p> <p>9 A. No, I was not.</p> <p>10 Q. Given the nature of how these assets</p> <p>11 were acquired through an acquisition as opposed</p> <p>12 to through the course of trading, did that</p> <p>13 affect the way that you went about doing your</p> <p>14 price-testing analysis and price-verification</p> <p>15 analysis?</p> <p>16 MR. HUME: Objection. Vague and</p> <p>17 ambiguous.</p> <p>18 A. No, it did not.</p> <p>19 Q. You applied exactly the same policies,</p> <p>20 procedures, methodologies that you applied to a</p> <p>21 trading book?</p> <p>22 A. Yes. There were some differences in</p> <p>23 the respect that, from a trading book</p> <p>24 perspective, the analysis would be based on the</p> <p>25 desk marking to bid and the analysis would be</p>

Page 38	Page 39
<p>1 Teague</p> <p>2 then performed based on that bid price. For</p> <p>3 this portfolio we did not have the assets</p> <p>4 already marked to bid. The assets were not</p> <p>5 already marked to bid or being held at bid by</p> <p>6 the firm. That would have been the difference.</p> <p>7 Q. So you had to take an additional step</p> <p>8 with respect to these assets and mark them to a</p> <p>9 bid or an ask before you did your price</p> <p>10 verification; is that right?</p> <p>11 A. Correct.</p> <p>12 Q. Sir, I have placed before you a</p> <p>13 document that was previously marked as</p> <p>14 Deposition Exhibit 817. If you could take a</p> <p>15 moment to review it. Let me know when you're</p> <p>16 done. I'll ask you a couple of questions about</p> <p>17 it.</p> <p>18 (Document review.)</p> <p>19 A. Yes.</p> <p>20 Q. I want to start with the e-mail chain</p> <p>21 that begins on page 2 of this exhibit and work</p> <p>22 our way to page 1. You'll see the first e-mail</p> <p>23 in the chain appears to be an e-mail from</p> <p>24 someone called Brendan Davis to Clement Bernard.</p> <p>25 Do you see that?</p>	<p>1 Teague</p> <p>2 A. Clement, yes.</p> <p>3 Q. Clement. And then the next e-mail up</p> <p>4 is from Clement to James Walker, Marcus Morton,</p> <p>5 Jasen Yang, Steven King. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. That shows Clement as with an e-mail</p> <p>8 address of clementbernard@lehman.com; is that</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. Is Clement someone who eventually</p> <p>12 joined Barclays as part of the acquisition?</p> <p>13 A. No, he is not.</p> <p>14 Q. Is he someone that you dealt with in</p> <p>15 connection with the acquisition?</p> <p>16 A. To a very small degree.</p> <p>17 Q. What was the extent of your</p> <p>18 interaction with Mr. Clement?</p> <p>19 A. The majority of my interaction with</p> <p>20 Mr. Clement was through e-mails such as this.</p> <p>21 Q. Now, you will see that the e-mail</p> <p>22 chain begins on page 2 on the evening of</p> <p>23 Wednesday, September 17, 6:19 P.M.; do you see</p> <p>24 that?</p> <p>25 A. Yes.</p>
Page 40	Page 41
<p>1 Teague</p> <p>2 Q. And it's attaching a series of zip</p> <p>3 files, do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And as you follow that e-mail chain up</p> <p>6 to page 1 of the Exhibit 817, you will see the</p> <p>7 most recent e-mail in the chain, which is the</p> <p>8 top of page 1. It's from Mark Washtell to you,</p> <p>9 do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And he's basically talking about the</p> <p>12 three files, and the three files that are</p> <p>13 referenced are the three files on the second</p> <p>14 page, do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. During that week of the 15th of</p> <p>17 September and over into the week of the 22nd,</p> <p>18 did you at any time analyze the valuation of a</p> <p>19 portfolio of assets other than what are</p> <p>20 referenced in various documents as the Fed repo</p> <p>21 assets or the assets that came over to Barclays</p> <p>22 as part of the Fed repo? Did you analyze any</p> <p>23 other portfolios of assets for the Lehman</p> <p>24 acquisition?</p> <p>25 MR. HUME: Objection to the form.</p>	<p>1 Teague</p> <p>2 Vague and ambiguous.</p> <p>3 A. Can you restate the question?</p> <p>4 Q. Let me ask it a different way. And</p> <p>5 here's the reason I'm asking it. The files that</p> <p>6 are being analyzed or that are subject of this</p> <p>7 e-mail --</p> <p>8 A. Uh-huh.</p> <p>9 Q. -- begin with these attachments in an</p> <p>10 e-mail Wednesday, September 17, do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. You know that, by the end of the week,</p> <p>13 the transaction took a shape and a form where</p> <p>14 assets that had been pledged to the Fed were</p> <p>15 then transferred over to Barclays, you</p> <p>16 understand that, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Do you have any understanding of what</p> <p>19 the connection is, if any, between these files</p> <p>20 that are being transferred over on Wednesday,</p> <p>21 September 17, and the Fed repo assets that</p> <p>22 ultimately become part of the Barclays/Lehman</p> <p>23 transaction? The same stuff? Different stuff?</p> <p>24 A. In all honesty, I've never done a</p> <p>25 reconciliation. I would assume these -- these</p>

Page 42	Page 43
<p>1 Teague</p> <p>2 were the same assets that would have eventually</p> <p>3 be part of the acquisition.</p> <p>4 Q. And certainly by Friday, September 19,</p> <p>5 Barclays had already received some, but not all,</p> <p>6 of the repo assets, correct?</p> <p>7 A. I have no idea what percentage, but</p> <p>8 yes, I believe there was potentially certain</p> <p>9 aspects, yes, were announced by Friday.</p> <p>10 Q. And things had been transferred over</p> <p>11 Thursday night, correct?</p> <p>12 MR. HUME: Objection. Lacks</p> <p>13 foundation.</p> <p>14 A. I didn't work in Operations. I</p> <p>15 couldn't speak to that subject.</p> <p>16 Q. But the role that you were playing in</p> <p>17 reconciling what was coming over, you knew</p> <p>18 things had come -- securities had come over</p> <p>19 Thursday night?</p> <p>20 MR. HUME: Objection. Lacks</p> <p>21 foundation.</p> <p>22 Q. Did you not, sir?</p> <p>23 A. I did not perform that role. That</p> <p>24 role was within Operations.</p> <p>25 Q. I'm not talking about role. I'm</p>	<p>1 Teague</p> <p>2 talking about your understanding based on where</p> <p>3 you were in the process.</p> <p>4 A. My review was essentially, just say</p> <p>5 from these -- from these files, I was provided a</p> <p>6 summary file and it didn't reconcile to these</p> <p>7 files. I was trying to understand (A) how to</p> <p>8 value based on the underlying and why it didn't</p> <p>9 make sense through the summary file I was</p> <p>10 provided. I didn't look at it from a "what has</p> <p>11 come on balance sheet" perspective. I was being</p> <p>12 told what would come on balance sheet, and it</p> <p>13 didn't reconcile from two different files that</p> <p>14 they provided me.</p> <p>15 Q. I have placed before you a document</p> <p>16 marked Exhibit 860, which is a cover -- two</p> <p>17 pages are cover e-mails, and then a spreadsheet</p> <p>18 that's been printed out or a series of</p> <p>19 spreadsheets that have been printed out from</p> <p>20 native files. Take a look at the document and</p> <p>21 let me know when you're done.</p> <p>22 (Document review.)</p> <p>23 MR. HUME: Sorry. Jay, was this</p> <p>24 produced as a single document? Can you just</p> <p>25 say again what --</p>
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<p>1 Teague</p> <p>2 MR. TAMBE: Yes. That's my</p> <p>3 understanding, is that what has been printed</p> <p>4 out and attached is what was produced as a</p> <p>5 single document as part of --</p> <p>6 MR. HUME: As the attachment?</p> <p>7 MR. TAMBE: As the attachment to this</p> <p>8 e-mail.</p> <p>9 A. Yes, I have reviewed this document.</p> <p>10 MR. HUME: There's a different e-mail</p> <p>11 on page 954 with an additional attachment or</p> <p>12 additional attachments and another e-mail at</p> <p>13 963.</p> <p>14 MR. TAMBE: Yes, and I think all the</p> <p>15 printouts are printouts off the files that</p> <p>16 are attached to each of those e-mails.</p> <p>17 That's what this exhibit is.</p> <p>18 MR. HUME: I'm just noting for the</p> <p>19 record there are a number of e-mails within</p> <p>20 the document that are followed by other</p> <p>21 spreadsheets.</p> <p>22 MR. TAMBE: And my understanding is</p> <p>23 all of that is what gets sent by Mr. Marcus</p> <p>24 Morton to Sean Teague on Thursday, September</p> <p>25 18, 2008. That's the way the e-mail chain</p>	<p>1 Teague</p> <p>2 reads. It's a series of e-mails being</p> <p>3 forwarded by Mr. Morton to Mr. Teague.</p> <p>4 Q. Do you see those?</p> <p>5 A. Yes, I do.</p> <p>6 Q. If you turn to the second page of the</p> <p>7 exhibit, it's literally page 2, the second page</p> <p>8 of this bound exhibit, you'll see another e-mail</p> <p>9 from Clement Bernard to James Walker, Marcus</p> <p>10 Morton and others, and has a subject line</p> <p>11 "Details of 9/16 inventory." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Did you ever perform any kind of</p> <p>14 independent price verification or analysis of</p> <p>15 the securities that were in Lehman's -- on</p> <p>16 Lehman's balance sheet as of 9/16?</p> <p>17 A. State it again. You're saying have I</p> <p>18 on any date performed an analysis of their 9/16</p> <p>19 data?</p> <p>20 Q. Yes.</p> <p>21 A. We did a, which would have been on</p> <p>22 Thursday or Friday, an initial analysis to see</p> <p>23 if we could -- what percentage of these</p> <p>24 portfolios could be independently valued to get</p> <p>25 an idea of the assets that were going to be</p>

1 Teague
2 delivered.
3 Q. Okay. Just so I understand your
4 answer, then, at some point around the Thursday
5 or Friday of that week, the 18th or the 19th of
6 September, you looked at spreadsheets of Lehman
7 inventory to see what percentage of that
8 inventory could be independently valued from
9 third-party sources, is that fair?
10 A. Correct.
11 Q. And did you prepare any reports or any
12 e-mails that set forth your conclusions about
13 that analysis?
14 A. Well, the first stumbling block on
15 that was, again, of these eight files that were
16 provided, they did not match off to the summary
17 file provided by Lehman. As to what the final
18 results of what could and could not be valued, I
19 do not believe anything was fully consolidated
20 by myself to that nature.
21 There were probably some e-mails from
22 this original file that were provided as
23 feedback to be it Marcus Morton or James Walker
24 on what -- to provide color on what we could
25 value, but that would have been the extent of

1 Teague
2 A. No.
3 Q. During the week of the 15th of
4 September, 2008, or thereafter, have you had any
5 conversations or communications with anyone from
6 the Bank of New York about valuing the Lehman --
7 the securities that were transferred over as
8 part of the Lehman acquisition?
9 A. No, I have not.
10 Q. Do you know whether anyone at Barclays
11 has spoken with anyone at BoNY about that topic?
12 A. Not that I'm aware of.
13 Q. You are aware, are you not, that the
14 Bank of New York had ascribed certain values to
15 some of the securities that were transferred to
16 Barclays as part of the Lehman acquisition?
17 A. Yes.
18 Q. Have you conducted any analyses of the
19 Bank of New York valuations to determine if
20 they're accurate, inaccurate, or to what extent?
21 A. We did a review from an independent
22 valuation perspective of what those prices were.
23 They were (A) stale. They were not reflective
24 of the date of acquisition.
25 In addition, the problem with the BoNY

1 Teague
2 it, to my knowledge.
3 As per your earlier document, there
4 was work done by Mark Washtell to show, you
5 know, what data could or could not be valued
6 from third-party data.
7 Q. And the earlier document you were
8 referring to was Exhibit 817; is that right?
9 A. Correct.
10 Q. During the week of the 15th, were you
11 part of any efforts to value portfolios of the
12 Lehman securities to account for any alleged
13 failures by Lehman to update their marks from
14 the 12th of September to the 15th of September?
15 Was that a project that you were involved in at
16 all?
17 A. No, it was not.
18 Q. Did you hear any conversations or
19 comments during the week of the 15th about
20 Lehman having failed to update its marks from
21 the 12th of September?
22 A. This is the first I've heard of it.
23 Q. So, up until this morning sitting in
24 this conference room, that's not something
25 you've heard of?

1 Teague
2 marks, in a very, very volatile marketplace,
3 they were not reflective of -- I believe the
4 last date for the BoNY's was a few days before
5 the acquisition -- they were not reflective of
6 for more illiquid assets of the data that we
7 were seeing.
8 Q. So you rejected all the BoNY values?
9 A. It was used as a last resort.
10 Q. What was the criteria that you used to
11 determine that the BoNY marks were the last
12 resort?
13 A. Well, upon initial review, we found
14 some discrepancies where we didn't think the
15 BoNY valuations were strong. The BoNY
16 valuations were most likely derived strictly
17 from third-party data and it was outdated
18 third-party data, vendor data.
19 If -- I have not worked at BoNY or
20 with BoNY to have a deep understanding of how
21 their prices are attributed, but it was
22 determined instead of doing a full-on analysis
23 of what was wrong with BoNY, it's best to start
24 fresh and perform an independent valuation and
25 just step aside and only use BoNY pricing when

<p style="text-align: right;">Page 50</p> <p>1 Teague</p> <p>2 and if no other pricing was available.</p> <p>3 Q. So that was the rule, that you would</p> <p>4 only use BoNY when no other pricing was</p> <p>5 available?</p> <p>6 A. Essentially, yes, that was the</p> <p>7 hierarchy. We tried to perform independent</p> <p>8 valuations, and when we couldn't find other</p> <p>9 pricing, we used the BoNY prices.</p> <p>10 Q. So anytime I go through the</p> <p>11 acquisition balance sheet and see a BoNY price</p> <p>12 used by Barclays, what you're telling me is that</p> <p>13 means that you have satisfied yourself that</p> <p>14 there are no other sources of pricing available</p> <p>15 for that security and that's why you used the</p> <p>16 BoNY price?</p> <p>17 A. To the best of my knowledge, yes.</p> <p>18 Q. Do you know whether other people on</p> <p>19 your team used the same hierarchy or approach to</p> <p>20 using or not using BoNY prices?</p> <p>21 A. That was the overall view for, to</p> <p>22 clarify, for any assets such as securitized</p> <p>23 products where there may not have been</p> <p>24 third-party vendor data, i.e., CDOs or ABS</p> <p>25 products, the BoNY prices would have just been</p>	<p style="text-align: right;">Page 51</p> <p>1 Teague</p> <p>2 thrown out even if there is no other price data</p> <p>3 available and independent analysis would have</p> <p>4 been performed using research data.</p> <p>5 Q. So, in some cases where there was no</p> <p>6 other price data available, you would not have</p> <p>7 used BoNY, right?</p> <p>8 A. For illiquid assets, BoNY would not be</p> <p>9 reliable.</p> <p>10 Q. But where BoNY was used, you used it</p> <p>11 because there was no other data available?</p> <p>12 A. Correct.</p> <p>13 Q. Sir, I've handed you a document marked</p> <p>14 as Deposition Exhibit 83B.</p> <p>15 A. Uh-huh.</p> <p>16 Q. It's a cover e-mail and has some</p> <p>17 spreadsheet pages attached to it. Take a moment</p> <p>18 to review it. Let me know when you're done.</p> <p>19 (Document review.)</p> <p>20 A. Okay.</p> <p>21 Q. You'll see the front page of this</p> <p>22 exhibit is an e-mail from Stephen Sell to</p> <p>23 various people. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Do you know Mr. Sell?</p>
<p style="text-align: right;">Page 52</p> <p>1 Teague</p> <p>2 A. Yes.</p> <p>3 Q. And where does he fit into the</p> <p>4 Barclays structure?</p> <p>5 A. I believe at the time he was COO for</p> <p>6 Stephen King.</p> <p>7 Q. So, again, I'm just trying to figure</p> <p>8 out where people fit in the structure. Is he a</p> <p>9 trader?</p> <p>10 A. No, he would be the business manager,</p> <p>11 in a sense, for Stephen King's desk.</p> <p>12 Q. And you'll see his e-mail is sent</p> <p>13 Sunday, September 21, do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And the e-mail is CC'd to people like</p> <p>16 Marcus Morton, James Walker, Stephen King and</p> <p>17 others. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. In his e-mail, Steve Sell states, "I</p> <p>20 have received agreement/consensus from Stephen</p> <p>21 King and James Walker. We should progress down</p> <p>22 the following path," and he sets out some bullet</p> <p>23 points, do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Do you have an understanding or</p>	<p style="text-align: right;">Page 53</p> <p>1 Teague</p> <p>2 knowledge about what this agreement or consensus</p> <p>3 was that Mr. Sell was referring to in his</p> <p>4 e-mail?</p> <p>5 A. Is my name on this?</p> <p>6 MR. HUME: Objection. Lacks</p> <p>7 foundation.</p> <p>8 A. Is my --</p> <p>9 Q. I didn't hear what you said.</p> <p>10 A. Apologies. Is my name on this e-mail?</p> <p>11 Q. Your name is not on this e-mail, no.</p> <p>12 A. Yeah, I've never seen this e-mail. So</p> <p>13 what was the question again?</p> <p>14 Q. Do you have an understanding or</p> <p>15 knowledge about what this agreement or consensus</p> <p>16 was that Mr. Sell was referring to in his</p> <p>17 e-mail?</p> <p>18 A. No. From reading the e-mail, I</p> <p>19 believe it looks as though they're talking about</p> <p>20 how to book these assets onto Barclays' system.</p> <p>21 Q. And in your view or your</p> <p>22 understanding, booking the phrase "onto the</p> <p>23 system" is different from doing an independent</p> <p>24 valuation of those trades; is that right?</p> <p>25 A. That's correct.</p>

1 Teague
2 Q. And your understanding was there was a
3 two-stage process: The trades were booked into
4 Barclays, and then you and your team went about
5 ascribing a value to those transactions or
6 trades; is that right?
7 A. Yes.
8 Q. So, going to his bullet points on his
9 e-mail where he says, "We should book all
10 positions from the Lehman financing facility to
11 BCI," he's got a parenthetical there, was that
12 done? Were all trades booked to BCI?
13 MR. HUME: Objection. Lacks
14 foundation.
15 A. Again, I was looking at it more from
16 an independent valuation perspective. I can't
17 speak to the -- how the accounting was
18 originally performed and how the booking was
19 handled by Operations.
20 Q. The next bullet point says, "We should
21 book based on the price within the BoNY file, at
22 least for day one." Do you see that?
23 A. Yes.
24 Q. Do you know whether that was done?
25 MR. HUME: Objection. Lacks

1 Teague
2 what types of assets would have been booked to
3 his trading desk?
4 A. The structured or securitized
5 products.
6 Q. Including mortgage products?
7 A. I can't say if it was all underneath
8 him or not, but yes.
9 Q. So securitized and structured products
10 would be placed with Mr. King?
11 A. Again, speaking very high level,
12 that's how it would work.
13 Q. And when those transactions or trades
14 were allocated to Mr. King's desk, they would be
15 allocated at a certain value, correct?
16 A. Again, whatever price they used to put
17 it onto the systems was just a function of
18 bringing it onto the systems.
19 Q. Once they were onto the systems, at
20 some point, either subsequent days and weeks,
21 you and your team would go -- did go through and
22 revalue those securities; is that right?
23 A. For the purposes of opening balance
24 sheet, correct.
25 Q. Again, I just want to understand the

1 Teague
2 foundation.
3 A. Again, I wasn't -- it was outside of
4 my role.
5 Q. So you don't know whether it was done
6 or wasn't done?
7 A. Correct. I couldn't -- couldn't
8 opine.
9 Q. Were you involved at all in the
10 process or the decision as to how the securities
11 that were being taken on as part of the Lehman
12 acquisition, how those would be allocated or
13 placed with different trading desks?
14 A. It was placed, from a very, very high
15 level, it was placed as a means to whatever
16 systems were managed by whatever trading desks
17 could handle these assets. So you wouldn't book
18 it to a trading desk where they were unable to
19 properly book those assets, which is why it was
20 split between different trading desks.
21 So Stephen King oversaw the, you know,
22 what came on the balance sheet, but because we
23 don't have one system to handle all products, it
24 was booked to different areas.
25 Q. So, taking Mr. King as an example,

1 Teague
2 mechanics of this process. Say a security had
3 been taken onto Mr. King's books at \$100, and
4 you came by two weeks later and said, well, that
5 should really only be \$90, what impact would
6 that adjustment of valuation of that security
7 have on Mr. King's P&L, if any?
8 MR. HUME: Objection. Lacks
9 foundation.
10 A. You would have to talk to the Product
11 Control area to go into the nuances of how the
12 accounting aspects were performed. I'm really
13 not privy to the specifics of that because it
14 was more so done on a portfolio, the overall
15 valuation, so that was most likely not how the
16 prices were updated in the system, as you're
17 suggesting.
18 Q. I don't understand, I guess, the
19 answer.
20 A. It would be most likely a portfolio
21 adjustment. We wouldn't go CUSIP-by-CUSIP and
22 change prices in the system.
23 Q. Okay. Just so --
24 A. Because time moves on.
25 Q. Right.

1 Teague
2 A. So a price today will not be the price
3 tomorrow. So I wouldn't -- by the time the
4 analysis was done, it would not be a number that
5 would then be ascribed to a position for a
6 previous date. So, after that point in time, it
7 would be a desk's responsibility to mark that
8 position on a going forward basis to ensure it's
9 in line with the market, and any adjustment
10 would be what would, you know, would be on a
11 portfolio basis against all of the assets.
12 Q. If you can just stick with the
13 example. Assume there's a security that's been
14 allocated or transferred to Mr. King's desk at
15 100, initially. It's now on the systems of
16 Barclays at 100.
17 A. Yes.
18 Q. Correct? Two weeks later, you come
19 through and say, well, it shouldn't have been
20 put on at 100, the right value as of the right
21 measurement date was actually 90.
22 A. Yes.
23 Q. In that example, would there be any
24 impact, forget about the specific impact, would
25 there be any impact on the P&L for Mr. King's

1 Teague
2 security, there's only been a \$20 appreciation
3 in that security. Which value would be used by
4 Mr. King's desk for their P&L purpose, 20 or 30?
5 A. Whatever price we attributed is the
6 opening price. The price that the desk
7 attributed for year-end would essentially be the
8 closing price, and any analysis on that price
9 would be performed by Independent Valuations at
10 year-end; and if we thought that price was out
11 of line, we would raise it to senior management
12 to ensure adjustments were made to that price.
13 So, just in short, opening price would
14 be determined within the Valuations, and the
15 price at year-end would be determined by the
16 desk, and that's essentially how the P&L aspect
17 would work, would be IVC assign a price for the
18 opening balance sheet, and from that date
19 forward, it would be the desk's responsibility
20 to mark and manage the positions within the
21 portfolio.
22 Q. Let's take a concrete example. Let's
23 look at the Giants Stadium Bonds. For
24 acquisition balance sheet purposes, you assign
25 values of \$10 or \$40 per hundred for those

1 Teague
2 trading desk?
3 MR. HUME: Objection. Lacks
4 foundation.
5 A. From a more high-level perspective, it
6 would be more so, taking it from 9/22 to 12/31,
7 it would be at whatever value we attributed to
8 the portfolio for 9/22 and the value at to say
9 year-end, you could just look at the difference
10 between the portfolio value. Again, I don't
11 think trying to bring it to the security level
12 value probably reflects the way any P&L would
13 have been performed.
14 Q. Maybe to simplify it, assume that the
15 only security that was transferred to Mr. King's
16 desk was the one security with \$100 value,
17 initially. You came by later and said, well
18 that should have been 90, not 100, and at the
19 end of the year, at 12/31, when you do your
20 valuation for that security again for year-end
21 purposes, you say it's got a value of 120.
22 Just looking at that security, based
23 on your valuations, there's been a \$30
24 appreciation in the value of that security.
25 Based on the initial \$100 valuation of that

1 Teague
2 securities, correct?
3 A. We used the prices that were
4 provided --
5 Q. By BoNY?
6 A. -- from BoNY.
7 Q. So that's an example where you used
8 BoNY because you had nothing else?
9 A. That's correct.
10 Q. All right. So let's use that example.
11 Independent Valuation Group says the
12 Giants Bonds as of the acquisition date are
13 worth either \$10 per hundred or \$40 per hundred,
14 correct? Right?
15 A. Correct.
16 Q. That's what you did?
17 A. Yes.
18 Q. Right? And the Giants Bonds by 12/31
19 had been valued by Barclays at 100 cents on the
20 collar, correct?
21 A. That's correct.
22 Q. So on those valuations of those Giants
23 Bonds, the difference from \$10 per hundred to
24 \$100 per hundred would be a gain on that
25 position for whatever desk held those Giants

1 Teague
2 Stadium Bonds, correct?
3 A. That's correct.
4 Q. And the same for the Giants Stadium
5 bonds that were valued by the Independent
6 Valuation Group at 40, and at 12/31 or by 12/31
7 were marked up to hundred percent. There would
8 be a gain from the 40 per hundred to a hundred
9 per hundred, correct?
10 A. That's correct. Market conditions had
11 changed over that time period.
12 Q. Is that what happened with Giants
13 Stadium, the market conditions change?
14 A. A combination of market conditions and
15 legal aspects of the Giants themselves, of the
16 auction rate notes themselves.
17 Q. What happened?
18 A. As of the acquisition, using the
19 dataset that we knew at the time of the
20 acquisition, we were looking at a handful of
21 auction rate notes which had not been brought to
22 auction since March of 2008. The last time one
23 was brought to auction in March of 2008, it had
24 failed auction, and it would appear Lehman made
25 no attempt to bring them to auction again. And

1 Teague
2 value should be ascribed to the Giants Stadium
3 Bonds as of the acquisition date?
4 A. The reinsurer that wrapped the
5 Barclays -- the Barclays positions, the Giants
6 notes were being held by a double C I believe
7 rated reinsurance. Due to that fact, you could
8 not compare those to any other assets that would
9 be out there and wrapped by a much better
10 reinsurance firm, and munis do not trade
11 actively without a strong wrap in that market
12 for auction rate notes. So, again, it brought
13 into question if -- if these would actually
14 succeed if brought back to auction.
15 Q. You said munis do not trade actively.
16 Do you consider the Giants Stadium issuance to
17 be a muni issuance?
18 A. It's an auction rate note, in
19 actuality. But auction rates notes had been
20 having issues since October of 2007, and the
21 market completely shut down for auction rate
22 notes in March 2008.
23 So we had really limited -- there was
24 actually no data from March on, and just as
25 an -- as a product group, auction rate notes

1 Teague
2 at such time of the acquisition, there was still
3 no means to value these, as they had not been
4 auctioned at that point in time for six months,
5 and a full process would have to be put in place
6 for the firm to be able to bring them to auction
7 and we had no knowledge if these would fail
8 auction again as they had failed auction the
9 last time they were brought.
10 Q. Had the Giants been paying a default
11 rate of interest on the bonds as of the
12 acquisition date?
13 A. Yes.
14 Q. So the auction that had failed back in
15 March of 2008 had resulted in a default rate
16 being applied, correct?
17 A. That specific default rate for the
18 asset that had failed auction was I believe
19 approximately 22 percent. As Lehman never
20 brought it to auction again, it was paying
21 somewhere in the neighborhood of Libor plus 25
22 or Libor plus 50 after that.
23 Q. Other than looking to see whether
24 there had been failed auctions or no auctions,
25 did you do any other analysis to determine what

1 Teague
2 were limping along for over a year at that point
3 in time.
4 Q. Was it the case that any other auction
5 rate securities held by Barclays were marked at
6 10 cents on the dollar or 40 cents on the
7 dollar, was that the case?
8 A. I don't recollect without having the
9 dataset in front of me, but any auction rate
10 notes in this situation were marked to BoNY
11 because we had no other available data, and
12 doing a cursory analysis, there was limited
13 information to, you know, to price it in any
14 other way.
15 Q. That's what I'm trying to figure out.
16 Was your analysis detailed or cursory when you
17 ascribed a value to the Giants Stadium Bonds for
18 purposes of the acquisition balance sheet?
19 MR. HUME: Objection. Vague and
20 ambiguous.
21 Q. Your word, "cursory." What do you
22 mean by "cursory"?
23 A. The overall view of the book was that
24 if we didn't have a price, then we would ascribe
25 the price provided by BoNY.

1 Teague
2 I had not performed a large amount of
3 auction rate note analysis in the past because
4 we as a firm did not have an auction rate desk
5 like Lehman had. We were not bringing positions
6 to market.
7 At that point in time, there was the
8 issue of breaking the dollar, as they stated,
9 where some firms were having issues,
10 specifically, money market funds, because their
11 assets had been worth less than a dollar, so
12 there was no auction rate market.
13 Looking at it from that perspective,
14 and here is an asset that hadn't traded for six
15 months, we put our, you know, our understanding
16 was, well, if BoNY was able to ascribe a price
17 to this, they, you know, must have additional
18 detailed information, so let's work with the
19 BoNY price because we have no other market data
20 out there, there's no, again, for an asset that
21 hasn't traded in six months, you're not going to
22 have additional market data to ascribe to it
23 directly from the marketplace.
24 Q. Just so I understand your answer, you
25 guessed that BoNY may have had some additional

1 Teague
2 Q. Did you look at values at which other
3 corporate auction rate securities had been
4 trading, if they had traded in the past week, in
5 the past month?
6 A. That's illogical. Why would you take
7 an asset --
8 Q. Did you do that? I understand you
9 think it's illogical. Did you do that?
10 A. It's illogical.
11 Q. So you didn't do it?
12 A. If you were going to look at something
13 that was selling versus something that's not
14 selling, it doesn't work.
15 Q. So you didn't do it?
16 A. No. Nothing with a double C was about
17 to trade on the street. If I were to do that, I
18 would be looking at something that's triple A.
19 That would not reflect these assets.
20 Q. What was the credit rating for the
21 Giants -- the issuer itself?
22 A. That I do not recollect.
23 Q. Had there been any default on the
24 payment of any interest by the Giants Stadium
25 issuing authority that had issued the bonds?

1 Teague
2 information about these securities and that's
3 why you felt comfortable taking the BoNY price;
4 is that right?
5 MR. HUME: Objection to the form.
6 A. I can't speak to how BoNY performed
7 any of their valuations.
8 Q. You have no idea, right? You had no
9 idea whether they had any special insights into
10 this security versus any of the others?
11 A. No, I would not have known how
12 specific -- any of the specifics of any of the
13 BoNY valuations.
14 Q. And in general, you thought that their
15 valuations were riddled with stale information,
16 improper third-party marks, all sorts of
17 problems?
18 A. Which is why we used them as the
19 last -- that was our last resort in the
20 hierarchy.
21 Q. Going back to the monoline wrapper you
22 talked about --
23 A. Again, going with no other data
24 available, you have to take what data is
25 available to you.

1 Teague
2 Had they failed to make interest payments?
3 A. Not that I'm aware.
4 Q. As far as you know, at any point had
5 the Giants Stadium issuer failed to make
6 interest payments on any of these bonds?
7 A. Not that I'm aware of.
8 Q. The wrap, the monoline --
9 A. There would have been no reason for
10 them to at that point as well because the rates
11 were set artificially low by Lehman if they were
12 not bringing it to market. So if you were not
13 paying the market rate, then there was limited
14 reason for you to not pay your coupon. If we
15 were to bring it back to auction, it's very
16 difficult to say if that would be the same
17 scenario.
18 Q. Well, when you did bring it back to
19 auction, did the Giants default on the interest
20 obligations?
21 A. No, they did not.
22 Q. And when you brought it back to
23 auction, the rate was what, 16 percent?
24 A. Yes, it was 16, 17 percent.
25 Q. And they paid that?

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<p>1 Teague</p> <p>2 A. Yes.</p> <p>3 Q. As part of trying to do whatever</p> <p>4 analysis you did on the Giants Stadium Bonds</p> <p>5 when you got them for acquisition balance sheet</p> <p>6 purposes, did you talk to any of the Lehman</p> <p>7 traders that had traded auction rate securities?</p> <p>8 A. No, I did not.</p> <p>9 Q. Did none of them come over to</p> <p>10 Barclays?</p> <p>11 A. I couldn't speak to that.</p> <p>12 Q. You don't know one way or the other?</p> <p>13 A. No. If -- I mean, in all honesty, I</p> <p>14 think many traders came over at first, and I</p> <p>15 don't know if they ended up staying, so I</p> <p>16 couldn't speak to that.</p> <p>17 Q. Did you look to see how Lehman had</p> <p>18 marked the Giants Stadium Bonds on Lehman's</p> <p>19 books?</p> <p>20 A. I honestly would imagine they marked</p> <p>21 everything to par, which wouldn't probably make</p> <p>22 any sense if nothing was passing, but no I did</p> <p>23 not.</p> <p>24 Q. You didn't check to see?</p> <p>25 A. No.</p>	<p>1 Teague</p> <p>2 Q. When you say you imagined they marked</p> <p>3 everything to par, you're just guessing?</p> <p>4 A. I'm just guessing because I think</p> <p>5 there was a small issue in the marketplace at</p> <p>6 that point in time where there was potential</p> <p>7 issues where, you know, there was no market</p> <p>8 color.</p> <p>9 MR. HUME: Jay, would now be a good</p> <p>10 time for a break?</p> <p>11 MR. TAMBE: If you could just wait for</p> <p>12 five or ten minutes. I'm going on to</p> <p>13 another document on Giants Stadium. Is that</p> <p>14 okay with you?</p> <p>15 THE WITNESS: Sure.</p> <p>16 (Deposition Exhibit 864, a document</p> <p>17 bearing Bates Nos. PwC-BarCap00046054</p> <p>18 through 056, marked for identification, as</p> <p>19 of this date.)</p> <p>20 Q. Sir, I have handed you a three-page</p> <p>21 document. It's an e-mail chain that's been</p> <p>22 marked as Exhibit 864. If you take a moment to</p> <p>23 review this e-mail chain. Let me know when</p> <p>24 you're done. My question at least for this pass</p> <p>25 through are going to be limited to the Giants</p>
Page 72	Page 73
<p>1 Teague</p> <p>2 Stadium issue. We'll come back and talk about</p> <p>3 the Pine issue, which is also in this e-mail</p> <p>4 traffic.</p> <p>5 (Document review.)</p> <p>6 A. Okay. I'm done.</p> <p>7 Q. This e-mail chain begins, the oldest</p> <p>8 e-mail I believe is on the third page of this</p> <p>9 exhibit. It's from Paul Cobson to you. Do you</p> <p>10 see that?</p> <p>11 A. Yes.</p> <p>12 Q. And who is Mr. Copson?</p> <p>13 A. Mr. Copson is the head of Product</p> <p>14 Control for Barclays Capital.</p> <p>15 Q. So, again, in terms of hierarchy?</p> <p>16 A. He reports in to Patrick Clackson.</p> <p>17 Q. So it's Marcus Morton to Copson to --</p> <p>18 A. At that point in time, it was Marcus</p> <p>19 Morton in to James Walker.</p> <p>20 Q. Okay.</p> <p>21 A. And James Walker in New York would</p> <p>22 have reported in to -- I'm not quite sure. It</p> <p>23 was either Paul Copson or directly in to Patrick</p> <p>24 Clackson. I think it was in to Paul Copson. So</p> <p>25 the --</p>	<p>1 Teague</p> <p>2 Q. Marcus to Walker to Copson?</p> <p>3 A. Correct.</p> <p>4 Q. Sean to Marcus?</p> <p>5 A. Correct.</p> <p>6 Q. And on up the chain. Okay.</p> <p>7 So the boss had some questions about</p> <p>8 the markups in the Giants Stadium, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And you provide your analysis, you</p> <p>11 provide an answer on the second page, and then</p> <p>12 some more detail in the first and second page.</p> <p>13 When you were providing this</p> <p>14 explanation to Mr. Copson, you were trying to be</p> <p>15 complete and accurate, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you believed you were complete and</p> <p>18 accurate in describing the reasons and the</p> <p>19 rationale for why you had marked the Giants</p> <p>20 Stadium bonds the way you had and then why they</p> <p>21 was subsequently marked up, correct?</p> <p>22 A. Correct.</p> <p>23 MR. HUME: Objection. Vague and</p> <p>24 ambiguous.</p> <p>25 Q. Was it your understanding that this</p>

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<p>1 Teague</p> <p>2 information that you were providing Mr. Copson</p> <p>3 was going to be provided to outside auditors for</p> <p>4 the bank as well?</p> <p>5 A. At that moment, no.</p> <p>6 Q. Other than this e-mail traffic, did</p> <p>7 you have any face-to-face meetings or telephonic</p> <p>8 discussions with Mr. Copson about the Giants</p> <p>9 Stadium valuation?</p> <p>10 A. Not that I recollect. I believe this</p> <p>11 e-mail at the time, he was -- he found it</p> <p>12 sufficient.</p> <p>13 Q. Subsequent to this e-mail traffic, at</p> <p>14 any point since the time you worked on the</p> <p>15 acquisition balance sheet, have you had</p> <p>16 face-to-face or telephonic discussions with Mr.</p> <p>17 Copson about the Giants Stadium valuation?</p> <p>18 A. I kept him aware of any other</p> <p>19 improvements in the pricing of Giants Stadium.</p> <p>20 Q. So my understanding is, subsequent to</p> <p>21 this e-mail chain, which looks like it's in</p> <p>22 November of 2008?</p> <p>23 A. Yes.</p> <p>24 Q. There would have been a further</p> <p>25 revaluation or marking up of the Giants Stadium</p>	<p>1 Teague</p> <p>2 bonds before year-end, correct?</p> <p>3 A. As course of regular action, we were</p> <p>4 price-testing the portfolio at month-end as well</p> <p>5 as the opening balance sheet. So, yes, through</p> <p>6 the month-end independent price testing, we were</p> <p>7 also reviewing where the desks were marked and</p> <p>8 where we thought assets were marked for this</p> <p>9 portfolio.</p> <p>10 Q. So for the Giants Stadium bonds in</p> <p>11 particular, by the end of the year, those marks</p> <p>12 were at 100 percent?</p> <p>13 A. That's correct.</p> <p>14 Q. And you would have kept Mr. Copson</p> <p>15 advised of that?</p> <p>16 A. Yes, I would have sent him e-mails as</p> <p>17 far as improvements in the pricing of Giants.</p> <p>18 Q. Other than Giants Stadium bonds and</p> <p>19 the Pine CLO that's referenced in this e-mail</p> <p>20 chain, were there any other particular positions</p> <p>21 that you had e-mail traffic with Mr. Copson on?</p> <p>22 A. Not that I recollect.</p> <p>23 Q. And other than specific e-mails on</p> <p>24 Pine and Giants Stadium, were you providing any</p> <p>25 general reports to Mr. Copson via e-mail about</p>
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<p>1 Teague</p> <p>2 price improvements in the portfolio?</p> <p>3 A. Upon request, if he had any specific,</p> <p>4 I don't know, CUSIP level questions or anything</p> <p>5 of that nature, then I would reply, but there</p> <p>6 was nothing, there was nothing formalized.</p> <p>7 MR. TAMBE: Let's take a break now.</p> <p>8 (Recess; Time Noted: 11:12 A.M.)</p> <p>9 (Time Noted: 11:34 A.M.)</p> <p>10 BY MR. TAMBE:</p> <p>11 Q. Mr. Teague, I want to go back to the</p> <p>12 desk allocation issue just to understand a few</p> <p>13 of the mechanics a little bit more.</p> <p>14 Ordinarily when a desk acquired a</p> <p>15 security through a transaction, they would have</p> <p>16 to take money out of one of their accounts or</p> <p>17 their funds and go buy the security, correct?</p> <p>18 A. Yes.</p> <p>19 Q. In this case, did the desks have to</p> <p>20 buy the securities that were being allocated to</p> <p>21 them?</p> <p>22 A. I couldn't speak to that aspect of it.</p> <p>23 I was just looking at the valuations of the</p> <p>24 underlying assets.</p> <p>25 Q. Were there any type of charges</p>	<p>1 Teague</p> <p>2 assessed to the desks when they were allocated</p> <p>3 securities?</p> <p>4 A. Again, I only focused on the valuation</p> <p>5 of the assets to determine market value. I</p> <p>6 couldn't speak to the, you know, that aspect of</p> <p>7 the deal.</p> <p>8 Q. So you know nothing about it?</p> <p>9 A. No. That would be more of a P&L</p> <p>10 question. If you spoke with the Product</p> <p>11 Control, not IVC, Product Control could provide</p> <p>12 you more clarity.</p> <p>13 Q. Who should I speak to to get clarity</p> <p>14 on that issue?</p> <p>15 MR. HUME: The answer should be given</p> <p>16 without prejudice to the fact that discovery</p> <p>17 is over. A hypothetical question.</p> <p>18 A. Yeah, I guess the individual who is no</p> <p>19 longer with the firm who oversaw the specifics</p> <p>20 of the Product Control would have been Tom --</p> <p>21 Q. McCosker?</p> <p>22 A. Yes. Thanks.</p> <p>23 Q. Do you know where Tom is?</p> <p>24 A. C12.</p> <p>25 Q. What's C12?</p>

1 Teague
2 A. It's a -- he's still --
3 Q. It's not sub-basement 12 or something
4 like that?
5 A. No, he's with Stephen King.
6 Q. Oh, okay.
7 A. A separate hedge fund.
8 Q. All right.
9 A. Carbon.
10 Q. Do you have any understanding as to
11 any capital charges that are assessed to the
12 desks against positions that they're holding?
13 MR. HUME: Objection. Asked and
14 answered.
15 A. That's outside of my scope.
16 Q. Once securities were allocated to
17 particular trading desks following the
18 acquisition, you do understand that there would
19 be in certain situations capital charges that
20 would be assessed to desks for the regulatory
21 capital that the bank has to carry against those
22 assets; is that right?
23 A. Yes. Conceptually, yes, that's how it
24 works.
25 Q. And the charges that are assessed

1 Teague
2 those positions, correct?
3 A. So if we found a potential issue with
4 a mark at month-end, if it's done and if we --
5 if we perform a remark within the first just say
6 four business days of the month, that price will
7 be adjusted for month-end. If for more illiquid
8 assets or assets where we don't have the market
9 data in that short a time period, the remarks
10 will take place within the following month.
11 Q. Sir, I have handed you a three-page
12 document previously marked as Deposition Exhibit
13 801B. Take a moment to look at it and let me
14 know when you're done and I'll ask you some
15 questions about it.
16 (Document review.)
17 A. Okay.
18 Q. The attachment to this e-mail chain,
19 which is the table that appears on the last page
20 of the exhibit, is it a document that you're
21 familiar with? Have you seen that before today?
22 A. I've seen, yes, I remember this
23 e-mail.
24 Q. And does this e-mail relate to the
25 process you described earlier about the

1 Teague
2 against the desks would be driven in part by the
3 values at which those securities are being
4 carried on the books of Barclays, correct?
5 A. Yes.
6 Q. And the value that's used for those
7 capital charge purposes is the value that is
8 derived by your group, not by the traders,
9 correct?
10 A. Sorry, you're saying as of day one or
11 as of day two?
12 Q. As soon as you have done your
13 valuation, as soon as you completed your
14 valuation.
15 A. I don't believe -- I can't speak
16 freely to that, but I believe, you know, as the
17 world keeps moving forward, again, I don't think
18 anyone after the day of the acquisition would be
19 looking at the opening balance sheet price. It
20 would be wherever the desk is marking it, so
21 it's really the desk price.
22 Q. And at month-end when you come in and
23 do an independent valuation on the desk prices,
24 those levels would be adjusted based on what
25 your view was of an independent valuation of

1 Teague
2 reconciliation of what was coming over and where
3 it was being placed?
4 A. This would be, yes, so from an
5 operational perspective, when Operations would
6 speak to -- the Lehman Operations would be in
7 discussions with Barclays' Operations on what
8 was coming over, and they would make sure
9 nothing was what they call in the industry DKed,
10 where essentially it was kicked back because of
11 any potential issues. When they were bringing
12 these onboard, Operations needed to make sure
13 they were putting it in the proper placeholders,
14 and in that sense, because there was assets of
15 many different types, these all would not
16 usually land on one trading desk because of
17 systems issues.
18 So this was Phil Nash, who was head of
19 Product Control for the Americas, still is
20 Product Control head of the Americas, was
21 helping coordinate the data for settlement to
22 ensure that the individual Mike Goldstein in the
23 e-mail, as you see on the first page, managed
24 projects for Product Control, and Mike Goldstein
25 was trying to coordinate to ensure the product

1 Teague
2 controllers update the attached file so it would
3 basically be a means to capture where everything
4 is going to settle, who the contacts are and,
5 you know, what systems it'll be located in by
6 asset class.

7 Q. The second page of the e-mail at the
8 bottom at the page is from Michael Goldstein to
9 James Walker, Marcus Morton and Phil Nash, do
10 you see that?

11 A. Yes.

12 Q. And he's got a few points, enumerated
13 points, do you see that?

14 A. Yes.

15 Q. The first point is, "Agreed to have
16 trade date of September 22." Do you see that?

17 A. Yes.

18 Q. Do you have an understanding as to
19 what he was referring to, "Agreed to have trade
20 date of September 22"? Agreed with whom?

21 A. I can't -- I can't say with whom. As
22 far as Mike I think was trying to confirm with
23 management what the proper settlement date
24 should be for the system.

25 Q. Is it your understanding that there

1 Teague
2 four times your size, what are you comparing,
3 are you comparing Barclays Capital to Lehman
4 Brothers, Inc.?

5 A. Just Capital, yeah, not all of
6 Barclays. But, you know, this was a large
7 undertaking.

8 Q. Because the acquisition was a fraction
9 of the size of Barclays, PLC, correct?

10 A. Barclays, PLC is much larger than
11 Barclays Capital, yes.

12 Q. Have you seen updated versions of this
13 spreadsheet, the third page of Exhibit 801B,
14 where the boxes have been filled in?

15 A. Not that I'm aware.

16 Q. I've handed you a document previously
17 marked as Deposition Exhibit 808B. Take a
18 moment to look at these three pages. Let me
19 know when you're done. I'll ask you some
20 questions.

21 (Document review.)

22 A. Okay.

23 Q. If you look at the e-mail chain, it
24 starts on the third page with an e-mail dated
25 Monday, September 15. Do you see that?

1 Teague
2 was a discussion and agreement internally at
3 Barclays as to what the trade date would be for
4 pricing, valuation, allocation purposes?

5 A. There was some confusion as to what
6 the trade date would be, as there was a lot of
7 moving pieces going on at that point in time.

8 Q. And the discussion of the moving
9 pieces you're talking about, those are
10 discussions within Barclays, or are you talking
11 about discussions between Barclays and Lehman?

12 A. Just in speaking with different
13 managers, I wasn't quite sure what the proper
14 date was. It was just everyone aligning to
15 what, you know, what date would be the -- the
16 date for the transfer.

17 The assets themselves, there was
18 questions over what was coming over, how much
19 was coming over, what the settlement date was,
20 how to do this. I mean, as a firm, we had never
21 been through an acquisition of a firm probably
22 four times our size before, so there was quite a
23 few questions that were coming up as -- as the
24 acquisition was taking place.

25 Q. When you say an acquisition of a firm

1 Teague

2 A. Uh-huh.

3 Q. And the most recent e-mail is on the
4 first page dated September 23. See that?

5 A. Yes.

6 Q. Going to the oldest e-mail, the last
7 page, it's the e-mail from Paul Copson to
8 several people and he's inquiring about
9 additional price testing procedures. Do you see
10 that?

11 A. Yes.

12 Q. And you understand that e-mail to be
13 independent of the Lehman acquisition; this is
14 just -- that was an e-mail that you sent in
15 light of market conditions; is that right?

16 A. Correct. This is in light of
17 potential, yeah, disruption in the markets.

18 Q. And then on the 15th itself, you
19 respond to Copson, Morton, Nash and others about
20 price testing procedures, correct?

21 A. Yes, so what we were -- I believe at
22 this point in time it was expected anytime --
23 anytime a potential bankruptcy is expected, be
24 it Lehman, be it Bear Stearns, be it WaMu, what
25 we do is this analysis to clarify was on any

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<p>1 Teague</p> <p>2 derivatives transactions that we have.</p> <p>3 So we didn't do a specific to Lehman</p> <p>4 in this analysis. This was an overall analysis</p> <p>5 of the price testing results as of midmonth to</p> <p>6 see where we were marked. So this was not --</p> <p>7 these results were not specific to Lehman.</p> <p>8 These were the results of the overall books as</p> <p>9 of the 15th of September since the markets were</p> <p>10 entering a free-fall.</p> <p>11 Q. And then when you turn to the first</p> <p>12 page of the exhibit, there's a reference,</p> <p>13 there's an e-mail from you in the middle of the</p> <p>14 page with a file embedded it, "Lehman</p> <p>15 Exposures/Status Tracking," do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. So, again, these would be -- this is a</p> <p>18 list of exposures where Lehman is the</p> <p>19 counterparty to Barclays on transactions; is</p> <p>20 that what's being captured here?</p> <p>21 A. Yes. So this was to -- this was to</p> <p>22 determine if, again, in the case of bankruptcy,</p> <p>23 we do this every time there is a counterparty</p> <p>24 which is a potential risk of not, you know,</p> <p>25 paying as far as the -- any derivative</p>	<p>1 Teague</p> <p>2 transactions that you have if you're going to</p> <p>3 lose that counterparty and if you do analysis on</p> <p>4 your overall exposure.</p> <p>5 Q. All right. So this is not related to</p> <p>6 the valuation of the inventory that came over</p> <p>7 from Lehman to Barclays as part of the</p> <p>8 acquisition?</p> <p>9 A. Specific to any derivatives we had on</p> <p>10 the firm that were facing Lehman as a</p> <p>11 counterparty.</p> <p>12 (Deposition Exhibit 865, a document</p> <p>13 bearing Bates Nos. BCI-EX-(S)-00201234</p> <p>14 through 241, marked for identification, as</p> <p>15 of this date.)</p> <p>16 Q. Sir, I have placed before you a</p> <p>17 multi-page document marked Exhibit 865. It's a</p> <p>18 long e-mail chain. If you want to take a moment</p> <p>19 to review it and I'll ask you a few questions</p> <p>20 about it.</p> <p>21 (Document review.)</p> <p>22 A. Okay.</p> <p>23 Q. Starting with the back of the e-mail</p> <p>24 chain in Exhibit 865, that last e-mail is a</p> <p>25 Stephen Sell e-mail that we had seen as a</p>
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<p>1 Teague</p> <p>2 stand-alone previously, correct?</p> <p>3 A. Yes.</p> <p>4 Q. So, moving forward in time from that</p> <p>5 e-mail, if you'll turn to the page that has at</p> <p>6 the bottom the last four digits 1238, you there?</p> <p>7 A. Yes.</p> <p>8 Q. Top of the page there's an e-mail from</p> <p>9 Stephen Sell, Sunday, September 21, 2008, 9:08</p> <p>10 P.M.</p> <p>11 A. Yes.</p> <p>12 Q. He's providing an update and he's got</p> <p>13 two bullet points in that e-mail. Do you see</p> <p>14 those?</p> <p>15 A. Uh-huh.</p> <p>16 Q. Yes?</p> <p>17 You have to answer aloud.</p> <p>18 A. Yes, I see this.</p> <p>19 Q. In the second bullet point he says,</p> <p>20 "We have determined we have looks like</p> <p>21 approximately 3100 securities/CUSIPs not set up</p> <p>22 within our systems." Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you understand that to mean that</p> <p>25 out of the total number of CUSIPs that were</p>	<p>1 Teague</p> <p>2 coming over, there were 3,100 securities and</p> <p>3 CUSIPs that were not already set up within the</p> <p>4 Barclays systems?</p> <p>5 A. Yes, that's how I interpret that.</p> <p>6 Q. So the rest of the securities and</p> <p>7 CUSIPs had some match on the Barclays system,</p> <p>8 that is, you already had a position with that</p> <p>9 CUSIP or security?</p> <p>10 A. Not a position.</p> <p>11 Q. Okay.</p> <p>12 A. The ability to book that asset. For</p> <p>13 equities, we were unable to book an asset if we</p> <p>14 didn't have the proper data in a system for it</p> <p>15 to understand the asset that was coming on. So</p> <p>16 it's not that we were holding these positions.</p> <p>17 Q. Was an analysis done of how many</p> <p>18 positions Barclays was holding that matched up</p> <p>19 with positions that it was acquiring?</p> <p>20 A. I can't speak to that.</p> <p>21 Q. Well, when you did your independent</p> <p>22 valuation of the securities that had come over,</p> <p>23 and in the case of many securities you made</p> <p>24 liquidity adjustments and other adjustments to</p> <p>25 come up with a valuation, did you look to see if</p>

1 Teague
2 Barclays had other similar securities in its
3 inventory that would also need to be valued
4 consistently with the approach you were taking
5 with the Lehman securities?
6 A. Well, in situations where --
7 Can you ask that question one more
8 time?
9 (Record read.)
10 A. I did not. I would not have looked
11 specifically at any securities that we had on
12 where, especially as market-maker, we may have
13 been marking assets to mid. If we had
14 market-maker status in those situations, that
15 would be different than whatever price you would
16 be acquiring it at.
17 Again, the analysis here was where
18 something -- we were looking at the transaction
19 in that stress marketplace to determine what the
20 market value was.
21 Q. Well, I need to understand that answer
22 a little better then. The way the transaction
23 occurred, you hadn't actually -- there hadn't
24 been an auction of these securities in the open
25 market, correct?

1 Teague
2 to buy this CUSIP for this much and this CUSIP
3 for so much, right?
4 A. No, not that I'm aware of.
5 MR. HUME: Objection. Lacks
6 foundation.
7 Q. Not that you're aware of?
8 A. Not that I'm aware of.
9 Q. So you have to allocate values to the
10 securities that have come over because there
11 wasn't a trading ticket or a confirmation saying
12 Barclays paid X dollars to buy the security,
13 correct?
14 A. That's correct.
15 Q. In your valuation process were you
16 effectively trying to recreate, given the market
17 conditions of that week, what the price would
18 have been if there had been an individual
19 transaction on that security?
20 A. We were trying to reflect the
21 market -- we were reflecting the market bid. We
22 were looking at it to reflect the market in a
23 stressed scenario, which was the 22nd of
24 September, correct.
25 Q. So, in doing your valuation, you were

1 Teague
2 A. Correct.
3 Q. These securities were purchased as
4 part of Barclays stepping into the shoes of the
5 Fed on the Fed repo, correct?
6 MR. HUME: Objection. Calls for
7 speculation.
8 Q. Is that your understanding of how
9 these securities came over?
10 A. Can you restate the question?
11 Q. What is your understanding of how
12 these securities came from Lehman to Barclays?
13 A. In the acquisition of the repo
14 collateral.
15 Q. And it was repo collateral that had
16 previously been pledged by Lehman to the Fed,
17 correct?
18 MR. HUME: Objection. Lacks
19 foundation.
20 A. Yes, it was the data -- it was the
21 positions held in that DTC account.
22 Q. As far as you know, there wasn't a
23 CUSIP-by-CUSIP valuation that was done between
24 Barclays and Lehman as part of the sale
25 transaction, where they sat down and said I want

1 Teague
2 trying to capture for those securities the
3 stressful market conditions that existed on the
4 22nd, correct?
5 A. Trying to mark it to a market bid as
6 of the 22nd of September.
7 Q. And did you make any adjustments for
8 the size of the positions?
9 A. The majority of the haircuts were
10 performed on a portfolio level, so I don't --
11 apologies, I don't believe we had any specifics
12 on the CUSIP level.
13 Q. So you decided to, on a liquidity -- a
14 liquidity adjustment that you would apply to an
15 entire portfolio of similar securities?
16 MR. HUME: Objection. Vague and
17 ambiguous.
18 Q. Is that right?
19 A. The bid/offer was applied at a product
20 level.
21 Q. Not an individual CUSIP level?
22 MR. HUME: Objection. Vague and
23 ambiguous.
24 A. No. For corporates, we priced them
25 slightly differently, where they were to the

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1 Teague
2 minimum of the available prices available from
3 third-party vendors because we had a larger
4 dataset of information.
5 Q. And when you did this valuation
6 exercise, you didn't look to see if you had
7 other similar securities already in your
8 inventory that you had valued at the last
9 month-end, August 31, or that the traders had
10 valued during the month of September?
11 A. No, not that I recollect.
12 Q. Was there a decision made not to look
13 at that data?
14 A. Not that I recollect.
15 Q. Sitting here today do you have any
16 idea as to what percentage or number of the
17 CUSIPs that were acquired through the Lehman
18 acquisition were CUSIPs for which Barclays
19 already had positions preexisting in its
20 inventory?
21 A. I wouldn't know that information.
22 Q. And then by dollar value of the
23 securities, do you have that information?
24 A. No, I wouldn't know that information.
25 Q. Not something you have looked at all?

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1 Teague
2 methodology to do a liquidity adjustment
3 product-type-by-product-type?
4 A. No, we did not perform that analysis.
5 The dataset at that point in time was being
6 marked to bid by the desks as opposed to taking
7 in mid marks from vendor pricing, so the desk
8 would be marking to bid.
9 We would be looking at our own
10 independent analysis of where the desk is
11 marking to bid, and if deemed appropriate, we
12 would take remarks. By the 30th, the market had
13 started functioning again. It was hard to say
14 if it was fully functioning, but as of the 22nd
15 of September, the market was essentially frozen,
16 as the Dow had dropped I believe something like
17 800 points that day.
18 Q. On the 22nd?
19 A. Yes, something on or around the 22nd
20 was a, quite a large market dislocation day,
21 versus September 30, where there was more
22 information from just say the government was now
23 considering to help support the markets. As of
24 that date, it was just basically essentially a
25 market free-fall.

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1 Teague
2 A. Not that I'm aware of.
3 Q. There were instances with some of
4 these securities where you took a mid price and
5 you made a mid to bid adjustment by applying a
6 liquidity discount or a liquidity factor of some
7 type, correct?
8 A. That's correct.
9 Q. Once you had determined what the
10 appropriate liquidity factor should be for that
11 product type, did you make any effort to apply a
12 similar liquidity factor to other securities of
13 a similar type that were in the Barclays
14 inventory?
15 A. Independent valuations was performed
16 at month-end. We didn't do an independent
17 valuation of the Barclays books as of September
18 22. This analysis was done for a specific date
19 underneath specific market conditions.
20 Q. September 30 was month-end, correct?
21 A. That's correct.
22 Q. When you did the independent valuation
23 for the entire Barclays inventory, both the
24 Lehman-acquired inventory and the preexisting
25 Barclays inventory, did you apply a similar

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1 Teague
2 Q. The market free-fall on the 22nd, did
3 that get captured in the end-of-day pricing for
4 the 22nd?
5 A. I guess it depends on the asset type.
6 Some assets may have improved as a flight to
7 safety. Other assets may have gone down. Very
8 illiquid assets would probably not have been
9 dramatically affected, as they were already very
10 illiquid assets.
11 Q. So but pricing securities at the end
12 of day on the 22nd would capture whatever effect
13 market movements on the 22nd during the day on
14 the 22nd had on the various markets, correct?
15 A. Again, but it depends on the asset
16 type. So it can go in either direction.
17 Q. You just described as a day of huge
18 dislocation and free-fall. So there were asset
19 classes that were negatively impacted by price
20 movements on the 22nd, correct?
21 A. Yes.
22 Q. But there were others that were
23 positively impacted?
24 A. Potentially, yes.
25 Q. In all of the analyses that you have

25 (Pages 94 to 97)

Page 98	Page 99
<p>1 Teague</p> <p>2 done at Barclays with respect to the Lehman</p> <p>3 valuation, are you aware of any valuations that</p> <p>4 were done by Barclays for the open of business</p> <p>5 on the 22nd as opposed to the end-of-day on the</p> <p>6 22nd?</p> <p>7 A. No, I am not aware of any, any attempt</p> <p>8 to perform analysis for open.</p> <p>9 Q. As part of the independent valuation</p> <p>10 work that you did, there were certain values</p> <p>11 that you and your team arrived at based on</p> <p>12 end-of-the-day 22nd values, correct?</p> <p>13 A. Yes.</p> <p>14 Q. There were other values that you</p> <p>15 arrived at based on September 30 values,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. And where you used September 30</p> <p>19 values, that would -- your valuation would</p> <p>20 incorporate movements in the price of a security</p> <p>21 in the functioning of the markets between the</p> <p>22 22nd and the 30th, correct?</p> <p>23 MR. HUME: Objection. Vague and</p> <p>24 ambiguous.</p> <p>25 A. I believe any analysis supported by</p>	<p>1 Teague</p> <p>2 PwC of positions valued closer to month-end were</p> <p>3 for positions where there was essentially no</p> <p>4 markets whatsoever and the dataset was in order</p> <p>5 to obtain I guess additional pricing discovery,</p> <p>6 if any.</p> <p>7 Q. Well --</p> <p>8 A. I believe, I mean, you can tell me, I</p> <p>9 mean, what asset classes was it again?</p> <p>10 Q. Any asset classes. I know there's</p> <p>11 some asset classes, I don't have them memorized,</p> <p>12 where -- you do know that there were some asset</p> <p>13 classes that were priced as of 30th of</p> <p>14 September, correct?</p> <p>15 MR. HUME: You mean on the final</p> <p>16 acquisition balance sheet? I don't think</p> <p>17 the question is clear.</p> <p>18 Q. On the final acquisition balance</p> <p>19 sheet, yes.</p> <p>20 A. Yes, I would have to look at the -- I</p> <p>21 would have to look at the asset classes. It</p> <p>22 was -- it is broken out in -- I did send out a</p> <p>23 memo discussing the valuations of the opening</p> <p>24 balance sheet. I would have to review that to</p> <p>25 see and speak to that.</p>
Page 100	Page 101
<p>1 Teague</p> <p>2 Q. And other than the end of day 22nd,</p> <p>3 September 30th, there was also a set of</p> <p>4 securities that were acquired by Barclays in</p> <p>5 connection with the Lehman acquisition that were</p> <p>6 valued as of December 22, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Other than those data points, are</p> <p>9 there any other data points -- date points that</p> <p>10 were used for valuation purposes for the opening</p> <p>11 day acquisition balance sheet?</p> <p>12 A. Initial analysis for munis were</p> <p>13 performed as of the, I believe the 19th as,</p> <p>14 again, going back to there was confusion over</p> <p>15 what was the proper date to perform the</p> <p>16 analysis, and in the end, it was determined and</p> <p>17 agreed that it would have immaterial effect on</p> <p>18 the overall valuation results.</p> <p>19 PwC opined that they didn't really</p> <p>20 consider it affecting the pricing, as there</p> <p>21 hadn't been really an active market between the</p> <p>22 two dates.</p> <p>23 Q. On all securities or just the munis?</p> <p>24 A. On the munis, as that had been</p> <p>25 performed as of the 19th, that analysis.</p>	<p>1 Teague</p> <p>2 Q. Was it PwC that told Barclays as of</p> <p>3 what date to value these securities or was it</p> <p>4 Barclays telling PwC what its views were as to</p> <p>5 when these things should be valued?</p> <p>6 MR. HUME: Objection. Lack of</p> <p>7 foundation.</p> <p>8 A. Any decisions of that nature were</p> <p>9 outside of anything I was involved in. I mean,</p> <p>10 to be honest, I'm sure you have a chain of</p> <p>11 e-mails, I didn't quite know what date at first.</p> <p>12 There was a lot of uncertainty from my</p> <p>13 perspective. And then the final resulting date</p> <p>14 was the 22nd.</p> <p>15 Q. But I'm not saying you made the</p> <p>16 decision, but given --</p> <p>17 A. I understand.</p> <p>18 Q. -- where you were in the organization,</p> <p>19 who made the decision as to what date to pick,</p> <p>20 PwC or Barclays?</p> <p>21 MR. HUME: Objection. Lacks</p> <p>22 foundation.</p> <p>23 A. Again, I can't state because I</p> <p>24 wouldn't have been involved in those</p> <p>25 conversations to be able to speak to who -- who</p>

1 Teague
2 made the decision and how it was finally
3 determined the 22nd.
4 Q. You're not saying that PwC directed
5 you to pick the 22nd, are you, sir?
6 A. I would not say that, no. I mean, as
7 you can see, there's e-mails where people are
8 stating we should use the 22nd. Based on that
9 e-mail traffic, I would have used the 22nd.
10 Q. I've seen e-mail traffic between you
11 and PwC on various issues. Other than the
12 Lehman acquisition, have you routinely
13 corresponded with PwC on other valuation issues?
14 A. PwC is the auditor for the firm, so I
15 do deal with PwC for any of the, say,
16 semiannual, annual reporting.
17 Q. And in connection with the Lehman
18 acquisition, other than the e-mail traffic, were
19 there any face-to-face meetings that you had
20 with anyone from PwC?
21 A. Yes, I would have walked through some
22 of the analysis performed with members of PwC
23 working for Rob MacGoey at the time.
24 Q. Who were the key PwC individuals that
25 you had sit-down meetings with?

1 Teague
2 was a part of the depositions, correct?
3 Q. Well, you tell me. What does that
4 name mean to you?
5 A. I'm trying to think. If I've had --
6 I've had -- I believe there's been e-mails
7 involving the professor. I just don't think
8 I've ever had any -- much in the way of
9 conversation with him.
10 Q. Do you remember as you sit here today
11 a single conversation with Professor Pfeleiderer?
12 THE WITNESS: Can we take a break?
13 Q. No, it's not a good time to take a
14 break. I would like you to answer the question.
15 A. If anything, it's just me trying to
16 piece it all together. I may have been on calls
17 with the professor, but I think any
18 conversations have been more -- if there was any
19 e-mail traffic where he may have been in the
20 background, but no, I'm not quite sure, to be
21 honest.
22 Q. Just to get the best of your
23 recollection as you sit here, you don't have a
24 specific recollection of any e-mail traffic with
25 Professor Pfeleiderer, do you, sir?

1 Teague
2 A. I can't recollect their name, but one
3 of Rob MacGoey's directs was assigned as one of
4 the go-to's that I dealt with.
5 Q. Other than that direct report to Rob
6 MacGoey, any other people in particular that
7 were your main points of contact at PwC in
8 connection with the Lehman acquisition account?
9 A. Postally would probably have been Rob
10 MacGoey.
11 Q. The announcement of the acquisition
12 accounting was done in February of 2009,
13 correct?
14 A. I'm not quite sure. That makes sense.
15 Q. Just using that roughly as the period
16 in time, have you had any discussions with PwC
17 about the valuation and accounting for the
18 Lehman acquisition anytime since February 2009
19 to the present?
20 A. Not that I can recollect, no.
21 Q. Have you spoken with an individual by
22 the name of Professor Pfeleiderer?
23 A. I believe there's been -- apologies.
24 One moment. He's the -- can you refresh me as
25 to who he is? I know he's done the -- I know he

1 Teague
2 A. No, I do not.
3 Q. And do you have specific recollections
4 of a conversation you've had with Professor
5 Pfeleiderer?
6 A. No, I do not.
7 Q. The two individuals that are sitting
8 on your side of your table, do you know who they
9 are?
10 A. Yes. You mean Marc?
11 Q. Marc?
12 A. Yes. I've had quite a few
13 conversations with Marc.
14 Q. Okay. When was the first time you had
15 a conversation with Marc Vellrath?
16 A. Quite some time ago. Sometime last
17 year, I take it.
18 Q. And I take it from your answer you've
19 had face-to-face meetings with Mr. Vellrath?
20 A. Yes, I've met -- I've discussed and
21 we've -- yes, we've met in the past.
22 Q. Okay. And approximately how many
23 meetings have you had with Mr. Vellrath?
24 A. I couldn't say, to be honest. Less
25 than a handful.

1 Teague
2 Q. Less than six meetings?
3 A. Yes. We've been on phone calls, but
4 face-to-face, just handful times.
5 Q. And have you discussed documents with
6 Mr. Vellrath?
7 A. Yes.
8 Q. And you've discussed your analyses and
9 your valuations with Mr. Vellrath?
10 A. Yes, I've provided replies to requests
11 from the movants or questions that came out of
12 the movants.
13 Q. I'm not sure I follow the last answer.
14 You provided --
15 A. Is it the movants? Is that the
16 proper way to say it?
17 MR. HUME: Movants.
18 Q. Movants.
19 A. Apologies. To the movants.
20 Q. So you have looked at documents filed
21 by the movants and you have discussed responses
22 with Mr. Vellrath?
23 A. Yes.
24 Q. Have you drafted documents for Mr.
25 Vellrath, answers, descriptions?

1 Teague
2 A. Not that I recall. Could have been on
3 conference calls, but not that I recall.
4 Q. And other than Mr. Vellrath and maybe
5 some of his staff who may have been on
6 conference calls, what other people -- were
7 there any other people who attended those
8 conference calls?
9 A. Just members of the legal team, if at
10 all.
11 Q. In preparation for your deposition,
12 did you review deposition transcripts provided
13 by anyone else in this case?
14 A. The only depositions I reviewed were
15 the ones for the movants.
16 Q. Do you remember any of the names of
17 the people or descriptions of their titles?
18 A. The professor was one of them.
19 Q. Professor Pfleiderer?
20 A. Yes.
21 Q. He's actually on your side.
22 A. He's on my side, I know, but I don't
23 think I've ever spoken to him. And the policies
24 and for the asset classes that I covered, I
25 reviewed the -- you know, the replies from the

1 Teague
2 A. I've given a summary from my
3 perspective of, you know, how I would -- how I
4 saw the question at hand and, you know, if it
5 was relevant at all from my viewpoint. I think
6 there is, of course, going to be some issues
7 between how we're valuing something or how the
8 movants would be valuing something and help
9 provide additional clarity.
10 Q. When you provided your responses or
11 input to Mr. Vellrath, did you do that orally or
12 by e-mail?
13 A. A combination thereof.
14 Q. So there will be some amount of e-mail
15 traffic where you provided that information?
16 A. Yes.
17 Q. Have you drafted any affidavits,
18 declarations, things like that?
19 A. No.
20 Q. Have you reviewed drafts of affidavits
21 and declarations?
22 A. Not that I'm aware of.
23 Q. Other than Mr. Vellrath, have you
24 spoken with members of his staff that you
25 recall?

1 Teague
2 movants on how we performed our analysis.
3 Q. Did you review depositions or expert
4 reports that were submitted by the movants
5 valuing the securities that your group had
6 valued?
7 A. Yes. And I provided replies to those,
8 yes.
9 Q. When you say you provided replies to
10 those, were those in e-mail form?
11 A. Combination thereof. E-mail and phone
12 call.
13 MR. TAMBE: I don't think any e-mails
14 have been produced authored by this witness
15 on any of those topics, so we would request
16 that those documents be produced. They
17 would have been called for by our
18 outstanding discovery requests?
19 MR. HUME: First, I don't think it's
20 called for by your discovery requests, but
21 more importantly, I think it's all work
22 product.
23 MR. TAMBE: I would disagree on that,
24 but we'll have our request, our request
25 outstanding.

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<p>1 Teague</p> <p>2 Q. Did you meet with Mr. Vellrath to</p> <p>3 prepare for your deposition?</p> <p>4 A. Say again?</p> <p>5 Q. Did you meet with Mr. Vellrath to</p> <p>6 prepare for your deposition?</p> <p>7 A. No, I have not.</p> <p>8 Q. Now, there were other members of</p> <p>9 Barclays' PCG group who have been deposed in the</p> <p>10 last couple of weeks?</p> <p>11 A. Yes.</p> <p>12 Q. Mr. Landreman. Mr. Washtell.</p> <p>13 A. Yes.</p> <p>14 Q. Have you spoken with them about their</p> <p>15 depositions?</p> <p>16 A. Only to the point of they said "good</p> <p>17 luck."</p> <p>18 Q. But you didn't discuss substance,</p> <p>19 either of what they were going to testify to or</p> <p>20 had testified to or what you would be testifying</p> <p>21 to; is that right?</p> <p>22 A. No, I hadn't.</p> <p>23 Q. In your work on the Lehman acquisition</p> <p>24 and the reconciliation of the valuation, did you</p> <p>25 keep any kind of a notebook?</p>	<p>1 Teague</p> <p>2 A. No.</p> <p>3 Q. You don't keep notebooks as part of</p> <p>4 your day-to-day work at Barclays?</p> <p>5 A. No, I mean, if anything, a notebook is</p> <p>6 just my to-do list. I don't have anything as</p> <p>7 far as detailed notes.</p> <p>8 Q. Did you look through your file for</p> <p>9 notes relating to the Lehman acquisition?</p> <p>10 A. Essentially, it's, if anything, it was</p> <p>11 just looking at e-mails if there was anything.</p> <p>12 Q. As far as you know, other than your</p> <p>13 e-mails, you don't have any other notes</p> <p>14 specifically relating to the Lehman</p> <p>15 acquisition --</p> <p>16 A. No, I do not.</p> <p>17 Q. -- or valuation?</p> <p>18 A. No, I do not.</p> <p>19 (Deposition Exhibit 866, a document</p> <p>20 bearing Bates Nos. LBHI 017959 through 964,</p> <p>21 with attachment, marked for identification,</p> <p>22 as of this date.)</p> <p>23 A. Is there a specific page?</p> <p>24 Q. I have placed before you a document we</p> <p>25 have marked as 866. It's an e-mail chain and</p>
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<p>1 Teague</p> <p>2 there's a spreadsheet attached to it. I just</p> <p>3 want to draw your attention to the e-mail</p> <p>4 traffic. You're welcome to look at the</p> <p>5 spreadsheet as well. Let me know when you're</p> <p>6 done.</p> <p>7 (Document review.)</p> <p>8 A. Yes.</p> <p>9 Q. Starting with the e-mail chain with</p> <p>10 your e-mail on the second page of the exhibit,</p> <p>11 it carries over onto the third page of the</p> <p>12 exhibit, that's your e-mail to Clement Bernard,</p> <p>13 do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And you are raising with him some of</p> <p>16 the issues that you had run into into</p> <p>17 reconciling those eight backup spreadsheets that</p> <p>18 we discussed earlier, do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And Clement asked you to speak with</p> <p>21 either Kevin Horan or Mike McGarvey, do you see</p> <p>22 that?</p> <p>23 A. Yes.</p> <p>24 Q. And then on the first page of the</p> <p>25 exhibit you provide them with a phone number.</p>	<p>1 Teague</p> <p>2 Did you ever speak to Kevin or Mike on those</p> <p>3 issues that you had identified?</p> <p>4 A. On the weekend, no.</p> <p>5 Q. You did not?</p> <p>6 A. No.</p> <p>7 Q. Subsequent to that weekend, did you</p> <p>8 end up speaking to them?</p> <p>9 A. Yes. I don't recollect how this was</p> <p>10 resolved. I think we ended up moving forward on</p> <p>11 to the next step. Most of this, again, was just</p> <p>12 trying to get a better understanding of the</p> <p>13 assets that were coming on, and I'm -- at a</p> <p>14 future date, we moved past this on to a</p> <p>15 different set of spreadsheets that were</p> <p>16 considered I believe it was Schedule A and</p> <p>17 Schedule B, so then a lot of the work done here</p> <p>18 was kind of pushed aside to Schedule A and</p> <p>19 Schedule B, which is a new set of spreadsheets.</p> <p>20 Q. Did you do any work to compare</p> <p>21 Schedule A and Schedule B to these</p> <p>22 spreadsheets --</p> <p>23 A. Not --</p> <p>24 Q. -- or reference to 866?</p> <p>25 A. Not that I can recollect. It was, due</p>

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<p>1 Teague</p> <p>2 to the ever-changing environment of different</p> <p>3 people getting involved, it was more a, you</p> <p>4 know, let's move on to this, you know, this new</p> <p>5 spreadsheet.</p> <p>6 Q. In your e-mail to Kevin Horan and Mike</p> <p>7 McGarvey at the bottom of page 1, you state, "I</p> <p>8 believe the idea is to value the portfolio as of</p> <p>9 15 September since that is the legal close</p> <p>10 date." Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. What was the basis for your</p> <p>13 understanding that September 15 was the legal</p> <p>14 close date?</p> <p>15 A. As per the e-mail, I said "I believe</p> <p>16 the idea" because I wasn't quite sure. So,</p> <p>17 again, any reference to that being the legal</p> <p>18 close date, I wasn't quite sure what the legal</p> <p>19 close date would have been.</p> <p>20 I think the 15th was when Lehman</p> <p>21 initially -- the initial analysis was done for</p> <p>22 Lehman on the 15th for the derivatives, so I</p> <p>23 thought that might be the same date.</p> <p>24 Q. Okay. And you'll see in the two</p> <p>25 e-mails on page 1 in your e-mail to Kevin Horan</p>	<p>1 Teague</p> <p>2 and Michael McGarvey, the subject line reads</p> <p>3 "LBI Inventory 9-16-08." Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And then on top of the page, you've</p> <p>6 got a different subject line, "LBI Inventory</p> <p>7 9-19-08 (repo)," do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And again, do you have a recollection</p> <p>10 of having done any kind of a valuation or</p> <p>11 reconciliation analysis on two different</p> <p>12 populations of transactions during that week,</p> <p>13 the 9/16 inventory and the 9/19 inventory?</p> <p>14 A. No, I do not.</p> <p>15 Q. And are you aware of anyone else at</p> <p>16 Barclays having done any such analysis?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Apologies. There is no -- it appears</p> <p>19 there would be no -- there's no attachment for</p> <p>20 the first e-mail. That attachment would be all</p> <p>21 the way down in the later e-mails the way I'm</p> <p>22 looking at it. Appears so.</p> <p>23 Q. You're looking for a spreadsheet of</p> <p>24 the 9/19 inventory, is that what you're looking</p> <p>25 for?</p>
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<p>1 Teague</p> <p>2 A. Yes, I didn't know if there was</p> <p>3 multiple attachments.</p> <p>4 Q. Okay.</p> <p>5 (Deposition Exhibit 867, a document</p> <p>6 bearing Bates Nos. BCI-EX-(S)-00201262</p> <p>7 through 263, with attachment, marked for</p> <p>8 identification, as of this date.)</p> <p>9 Q. I've handed you an exhibit marked</p> <p>10 Deposition Exhibit 867. It's a cover e-mail and</p> <p>11 then an attached spreadsheet. If you could take</p> <p>12 a look at that, let me know when you're done,</p> <p>13 and I'll ask you some questions.</p> <p>14 (Document review.)</p> <p>15 A. Yes. Yes.</p> <p>16 Q. At the bottom of the e-mail, you send</p> <p>17 a spreadsheet to an address that's listed as</p> <p>18 GFNY Price Test, do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. What does the "GFNY" stand for?</p> <p>21 A. Global Finance New York Price Testing.</p> <p>22 Q. So that would be part of -- that's</p> <p>23 part of the Product Control group?</p> <p>24 A. That's part of IVC.</p> <p>25 Q. That's part of IVC, okay.</p>	<p>1 Teague</p> <p>2 And you get a response back from Kevin</p> <p>3 Jhea asking you what date, and you respond in</p> <p>4 your e-mail, "As per Phil Nash, assets were</p> <p>5 acquired using BoNY prices which I have heard on</p> <p>6 Thursday close, as well as being generally</p> <p>7 inaccurate. We need to test against our</p> <p>8 acquisition date which is first thing Monday</p> <p>9 which equals to Friday close (test the execution</p> <p>10 price reasonableness as of Friday close)." Do</p> <p>11 you see that?</p> <p>12 A. Uh-huh.</p> <p>13 Q. Yes?</p> <p>14 A. Yes.</p> <p>15 Q. You did do an analysis of the</p> <p>16 valuation as of the Friday close, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And at some subsequent date, you did</p> <p>19 another analysis as of the Monday close,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. Did you prepare a comparison table or</p> <p>23 a spreadsheet that set out all of your</p> <p>24 calculations as of the Friday close and compare</p> <p>25 it to your calculations as of the Monday close?</p>

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<p>1 Teague</p> <p>2 Q. Yes, and it says Liquidity tab.</p> <p>3 A. Mine says, "Sheet 2."</p> <p>4 Q. You should find one that says</p> <p>5 Liquidity tab. It's a tab with a spreadsheet</p> <p>6 that's located at that number. We'll put up the</p> <p>7 spreadsheet. That may be the easiest way of</p> <p>8 doing it. It's about 20 pages past where you</p> <p>9 were.</p> <p>10 A. Okay.</p> <p>11 MR. HUME: It's 996?</p> <p>12 MR. TAMBE: It's 996. It's 213996,</p> <p>13 Liquidity tab. There's a series of tabs in</p> <p>14 that spreadsheet. This is the printout of</p> <p>15 the Liquidity tab.</p> <p>16 Q. The question is a basic one. The</p> <p>17 Liquidity tab that appears in these</p> <p>18 spreadsheets, that's used as a grid or that's a</p> <p>19 cross-reference for purposes of making liquidity</p> <p>20 adjustments by product type; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And the "Liquidity Haircut" column</p> <p>23 that is shown on this tab, the individual</p> <p>24 liquidity haircuts there are expressed as a</p> <p>25 percentage, 1 being 100 percent and anything</p>	<p>1 Teague</p> <p>2 less than 1 being less than 100 percent, right?</p> <p>3 A. Correct.</p> <p>4 Q. There was a methodology or an approach</p> <p>5 you followed to determine what the liquidity</p> <p>6 haircut would be for each product type; is that</p> <p>7 right?</p> <p>8 A. That's correct.</p> <p>9 Q. And which of these liquidity haircuts</p> <p>10 were you personally responsible for developing</p> <p>11 or deriving?</p> <p>12 A. I would have been involved in the --</p> <p>13 for the Rates, say Treasuries, agencies, munis,</p> <p>14 corps. The next piece I think was all Rich</p> <p>15 Landreman: Sovereigns, corporate credit, EM</p> <p>16 Corp., EM. And then from there down would be</p> <p>17 Mark Washtell for the Equities, and PMTG would</p> <p>18 have been Rich Landreman. And I may have, but I</p> <p>19 don't recollect, for the CDO mezz and CDO</p> <p>20 senior.</p> <p>21 Q. So we've pulled up on the screen --</p> <p>22 A. CLS.</p> <p>23 Q. We have pulled up on the screen that</p> <p>24 tab.</p> <p>25 A. Yes.</p>
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<p>1 Teague</p> <p>2 Q. Just for purposes of the record, we</p> <p>3 can just read in the row numbers.</p> <p>4 A. Certainly.</p> <p>5 Q. So if we can just scroll down the rows</p> <p>6 until we get to Rates, if they're there.</p> <p>7 A. You have to scroll back up.</p> <p>8 Q. So, starting with row 35, it says</p> <p>9 Rates, Treasuries. That would have been</p> <p>10 something you covered?</p> <p>11 A. Yes, I would have been involved in row</p> <p>12 35, 36, 37, 38 and then jump down to 44, 45, 46,</p> <p>13 47.</p> <p>14 Q. Are there any other liquidity haircuts</p> <p>15 that you calculated that don't appear on this</p> <p>16 table?</p> <p>17 A. On the PMTG tab?</p> <p>18 Q. Yes.</p> <p>19 A. I may have been involved in the -- you</p> <p>20 have to scroll down a bit -- the 62 and 63.</p> <p>21 Q. So 62 is PMTG and then CDO Mezz and</p> <p>22 CDO Senior?</p> <p>23 A. Yes.</p> <p>24 Q. Those two lines?</p> <p>25 A. And 66 and 67, which would be CLO Mezz</p>	<p>1 Teague</p> <p>2 and CLO Senior.</p> <p>3 Q. So, going back up into the Rates rows,</p> <p>4 38 was one of the first ones, just so we</p> <p>5 understand, row 35, this table says it's for</p> <p>6 Rates, Treasuries, the liquidity haircut, the</p> <p>7 entry is .999. So that's one-tenth of 1</p> <p>8 percent, that's the liquidity haircut?</p> <p>9 A. Correct.</p> <p>10 Q. And then for Rates, Agencies, there's</p> <p>11 a 5 percent liquidity haircut?</p> <p>12 A. That's correct.</p> <p>13 Q. And that's applied across the board to</p> <p>14 all products, all individual CUSIPs that are</p> <p>15 classified as Rates, Agencies; Is that right?</p> <p>16 A. Yes.</p> <p>17 Q. That methodology of deriving a</p> <p>18 liquidity haircut and applying it across all</p> <p>19 CUSIPs in a particular product type, have you</p> <p>20 ever done that before in your work at Barclays?</p> <p>21 A. Basically, the analysis was performed</p> <p>22 looking at third-party data, looking at yields.</p> <p>23 For the Treasuries what we did was, as a means</p> <p>24 in this marketplace, again, what we're looking</p> <p>25 at is a very distressed marketplace that was</p>

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1 Teague
2 outside of the normal market environment that
3 one usually receives -- one usually sees this,
4 you know, potential once-in-a-lifetime event,
5 hopefully, resulted in us having to determine,
6 using vendor data, what -- what type of haircut
7 would be appropriate for marking all of the
8 assets to bid.
9 Q. Have you ever used that kind of a
10 process before in your work at Barclays?
11 A. I haven't been through a market
12 environment of this in my life.
13 Q. Putting aside the market environment,
14 have you taken those kinds of liquidity haircuts
15 and applied them across an entire class of
16 securities?
17 MR. HUME: Objection. Asked and
18 answered.
19 A. No, I have not. There would not have
20 been a need. And again, this was -- this
21 haircut was taken on vendor data, not on
22 traders' marks. So it would be marked to bid.
23 So that would be a mid to bid, not looking at a
24 bid already marked by the traders.
25 Q. For Rates, Corporate, you have a

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1 Teague
2 have used previously at Barclays, correct?
3 A. No. Based on the market environment
4 that we were looking at, Corporates as an asset
5 class have quite a few vendor sources. Some
6 other asset classes may not have as robust
7 third-party data.
8 The question with the Corporates was,
9 in looking at all this vendor data, how much of
10 this vendor data is stale as the market was
11 dropping considerably day over day. So the
12 overall theme is, in short, whoever is marked
13 the lowest is the best reflection of the
14 marketplace.
15 If the majority of the positions are
16 going in one direction, why would you take an
17 average and take a bid/offer against the
18 average? Because we have, again, for this asset
19 class, we have multiple vendors. So now we have
20 a lot of data points to look at and with a lot,
21 you know, the issue with the vendors is a lot of
22 times the vendors call up, will talk to say a
23 broker, a dealer and ask where something is
24 priced and that's where they'll mark it.
25 It's an indicative price. It's not a

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1 Teague
2 comment that reads, "Lowest third-party price
3 utilized in place of V-O." Do you see that?
4 A. Yes.
5 Q. And so there you did not do a
6 liquidity adjustment, but if you had multiple
7 third-party prices, you'd pick the lowest price
8 as the price you would apply, correct?
9 A. That's correct.
10 Q. Is that an approach that you have used
11 previously in your work at Barclays?
12 A. No, I have not used that approach
13 before.
14 Q. When you go down to rows 45 and 46,
15 there, too, you have comments, a similar
16 comment, "Minimum third-party price utilized in
17 place of V-O." Do you see that?
18 A. Yes.
19 Q. And again, there you didn't apply a
20 percentage liquidity haircut; you took the
21 lowest third-party price that you had obtained;
22 is that right?
23 A. Yes, that was the methodology we chose
24 to use.
25 Q. And that's not a methodology that you

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1 Teague
2 clearing price. If the trader is not seeing any
3 transactions, that trader may actually refer
4 back to just say the vendor with the same price
5 they had yesterday, the day before, the day
6 before that in a free-falling market. So
7 whichever vendor has the best data is most
8 likely the vendor with the lowest price because
9 that means they're actually getting updated
10 information.
11 Q. Did you actually do that? When you
12 had multiple prices from vendors, did you go
13 back to the vendors and say what's this based
14 on? Do you have more current data? Why are you
15 using this price? Or did you simply look at the
16 price quoted and pick the lowest one?
17 A. We went with the lowest price because
18 I know how the vendors operate. I know how
19 they're -- they're pricing. They're obtaining
20 their pricing. If they're obtaining their
21 pricing through -- they either price by calling
22 and getting information or through -- they can
23 also price through a model, but in a
24 free-falling market, what you end up having is a
25 lot of very stale prices, prices that reflect

33 (Pages 126 to 129)

1 Teague
2 what the price was two, three, five days ago,
3 ten days ago.
4 Q. Did you do that, where you had say
5 three prices and one is at -- say the three
6 prices are 10, 5 and 1. Under your test for
7 corporate rates, you would have used 1 as the
8 lowest of the three prices, correct?
9 A. Yes.
10 Q. Okay. You would not have gone back to
11 the vendor who quoted the 5 and seen what that
12 vendor had quoted yesterday or the day before or
13 the day before that, correct? You assumed that
14 it was a stale price?
15 A. Yes, I assumed it was a stale price
16 based on the fact that there was quite a few
17 stale prices in the marketplace without having
18 to --
19 Q. And you wouldn't have had --
20 MR. HUME: Object to form.
21 A. -- without going into the specifics, I
22 have the 19th and I have the 22nd's, you know,
23 third-party data.
24 Q. Did you do that? Did you, for
25 purposes of applying this test, lowest

1 Teague
2 went with the lowest prices out there because
3 that being the logic that that would be the best
4 reflection of the marketplace if you were
5 looking for a bid price.
6 Q. You did the same thing on corporate
7 credits and corporates; is that right?
8 A. Yes. They're all essentially
9 corporates. It just had different titles for
10 some reason.
11 Keeping in mind most the vendor prices
12 are mid, that's the other aspect of it, so a
13 vendor price may not provide you a reflection of
14 where the bid would be. It's an indicative
15 level. It's a market level. It does not
16 actively reflect it being a bid level.
17 So taking that doesn't make us overly
18 conservative. What we could be looking at there
19 could even be an ask, that lowest price.
20 Q. On any of these categories where you
21 applied this rule, which is the lowest third
22 price -- third-party price was the one utilized,
23 did you look to see if Barclays traders had
24 transacted on any similar securities on the 19th
25 or the 22nd; and, if so, at what prices?

1 Teague
2 third-party price utilized, look at how the same
3 vendor had quoted a particular security on the
4 19th and then on the 22nd, and based on that
5 make a determination, well, this is clearly a
6 stale price versus here's another price that has
7 been updated, therefore, it must be superior?
8 Did you do that analysis?
9 MR. HUME: Objection. Objection,
10 vague. Are you asking whether he did it on
11 every security?
12 Q. On any of them.
13 A. No, it wasn't done on a security
14 basis.
15 Q. Was it done on any basis?
16 A. We did a review to see if, you know,
17 what price movement. There wasn't a dramatic
18 price movement between the two dates, and we
19 went with the lowest price that was available.
20 Q. So if corporate rates in general as a
21 category had moved, you went for the lowest
22 price; is that what you're telling me?
23 A. Yes. As a category, there was
24 dramatic free-fall in the corporates that, you
25 know, we're not seeing reflected as a -- so we

1 Teague
2 A. I did not. I don't believe there was
3 any trading activity going on really at that
4 point in time.
5 Q. Well, did you do something to
6 determine whether or not there was trading
7 activity on any of these CUSIPs at that point in
8 time?
9 A. Not that I recollect.
10 Q. If there had been trading activity on
11 the 19th and 22nd in these CUSIPs by Barclays
12 traders or other traders, that would be a
13 relevant data point, correct?
14 A. Correct.
15 Q. It would be actual trade data,
16 correct?
17 A. If we look back at the valuations that
18 was performed on 12/22, the TRACE data is -- is
19 the overriding prior to any other third party,
20 and the TRACE data did line up pretty well with
21 all the lowest prices that we were looking at
22 from the vendors.
23 Q. So your last answer refers to the
24 valuation you did on what you refer to as the
25 JPM portfolio, correct?

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<p>1 Teague</p> <p>2 a look at it. Let me know when you're done.</p> <p>3 I'll ask you a couple of questions.</p> <p>4 (Document review.)</p> <p>5 A. Yes.</p> <p>6 Q. And you recognize this as an e-mail</p> <p>7 chain that was discussing setting up some kind</p> <p>8 of a shared drive for exchanging information</p> <p>9 with people, do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Was that in fact done? Was there a</p> <p>12 shared drive for exchanging information?</p> <p>13 A. I don't recollect. I take it --</p> <p>14 there's a good chance, apologies, but no, I</p> <p>15 don't remember.</p> <p>16 Q. In your e-mail to Tom, it looks like</p> <p>17 Shashaty, which is on the first page?</p> <p>18 A. Yeah.</p> <p>19 Q. Do you see that? In your e-mail to</p> <p>20 Tom, you identify people from the Barclays side</p> <p>21 who would need access to the Lehman data, and</p> <p>22 then you make some recommendation as to who</p> <p>23 should be included from the Lehman side, do you</p> <p>24 see that?</p> <p>25 A. Yes.</p>	<p>1 Teague</p> <p>2 Q. Do you have any reason to believe that</p> <p>3 this shared drive or information-sharing process</p> <p>4 was not set up?</p> <p>5 A. No, no reason to believe it was not</p> <p>6 set up in the system. No reason to believe it</p> <p>7 did not happen. I just don't recollect the</p> <p>8 shared drive being set up.</p> <p>9 Q. The subject line on the e-mails on the</p> <p>10 first page read, Price testing -</p> <p>11 Converts/Equity/Preference"; is that right?</p> <p>12 A. It would be preferred eqs.</p> <p>13 Q. Any reason to believe that this shared</p> <p>14 drive was limited to price testing on just those</p> <p>15 products or whether this was a broader shared</p> <p>16 drive?</p> <p>17 A. If it were to have happened, I take it</p> <p>18 it would have been a broader shared drive.</p> <p>19 Q. I'd asked some specific questions</p> <p>20 about interactions with former Lehman as part of</p> <p>21 your work. Let me ask you a broader question.</p> <p>22 In general, did you have any</p> <p>23 conversations with Lehman traders in the course</p> <p>24 of your independent price valuation work for the</p> <p>25 acquisition balance sheet?</p>
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<p>1 Teague</p> <p>2 A. We might have touched base with a</p> <p>3 couple of traders just to get some</p> <p>4 understanding, but I believe that was far enough</p> <p>5 outside of the spectrum of when the analysis was</p> <p>6 done. If, like for this aspect, these were the,</p> <p>7 you know, this was the Barclays valuations that</p> <p>8 we were trying to reach out to I think the</p> <p>9 Lehman valuations individuals who -- that's</p> <p>10 Neeraj was on the Lehman valuations team -- to</p> <p>11 start working together.</p> <p>12 Q. And was Neeraj someone who had come</p> <p>13 over from Lehman to Barclays?</p> <p>14 A. As of that date, everyone had come</p> <p>15 over, as of the 26th of September. Neeraj was</p> <p>16 no -- by the end of 2008, I don't know what date</p> <p>17 Neeraj was no longer with the firm.</p> <p>18 Q. And do you know whether people like</p> <p>19 Neeraj, who were formerly with the Lehman</p> <p>20 valuation team, played any role in the</p> <p>21 valuations that Barclays came up with for the</p> <p>22 acquisition balance sheet?</p> <p>23 A. No, Neeraj didn't -- didn't play a</p> <p>24 role in the valuations process.</p> <p>25 Q. Did any other former Lehman valuation</p>	<p>1 Teague</p> <p>2 professionals play a role in that acquisition</p> <p>3 balance sheet valuation?</p> <p>4 A. No.</p> <p>5 Q. No?</p> <p>6 A. No.</p> <p>7 Q. So let's go into a document that's</p> <p>8 been marked previously. And I'll pull it up on</p> <p>9 the screen as well. I'm handing you the hard</p> <p>10 copy. I'm handing you what has been marked as</p> <p>11 Exhibit 86B. It's a printout from a</p> <p>12 spreadsheet. It's not the entire spreadsheet.</p> <p>13 And what I have pulled up on the screen is the</p> <p>14 native version of that document, that same</p> <p>15 spreadsheet.</p> <p>16 A. Okay.</p> <p>17 Q. Which has been marked as Movants'</p> <p>18 Trial Exhibit 102N, "N" for native.</p> <p>19 Looking at the hard copy, the paper</p> <p>20 document Exhibit 86B, is that a document you are</p> <p>21 generally familiar with?</p> <p>22 A. Yes, I am.</p> <p>23 Q. And do you recognize that as the</p> <p>24 valuation of the non-JPM assets?</p> <p>25 A. This would be the 9/22. So, yes,</p>

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<p>1 Teague</p> <p>2 these were the non-JPM assets.</p> <p>3 Q. What I'm going to do, if I'm able to</p> <p>4 navigate my way around the spreadsheet, is pull</p> <p>5 up in the native format what is the electronic</p> <p>6 version of that first page of the hard copy</p> <p>7 document which you're looking at.</p> <p>8 Can you just look at the numbers and</p> <p>9 confirm that that is in fact the same document?</p> <p>10 A. Yes, it appears to be the same</p> <p>11 document.</p> <p>12 Q. And just so we understand, then, your</p> <p>13 knowledge about the various columns starting</p> <p>14 with column B, that's the -- the dollar amounts</p> <p>15 that appear there, those are the notional</p> <p>16 amounts off the securities?</p> <p>17 A. Yes.</p> <p>18 Q. And what does that mean when you say</p> <p>19 they are the notional amounts of those</p> <p>20 securities?</p> <p>21 A. That would be the face value amounts</p> <p>22 of the securities themselves. So the notional</p> <p>23 times price times factor would come up with your</p> <p>24 market value.</p> <p>25 Q. The next column C, which is BoNY</p>	<p>1 Teague</p> <p>2 Value, what is that a reference to?</p> <p>3 A. That's the Bank of New York value that</p> <p>4 they attributed to the assets.</p> <p>5 Q. When you move over to column D, it</p> <p>6 says at the top "22-September" and then it says</p> <p>7 "PCG Value." What is that column?</p> <p>8 A. That's the independent valuation that</p> <p>9 was determined by Product Control.</p> <p>10 Q. And the 22 September indicates that</p> <p>11 that's a valuation as of end of day September</p> <p>12 22; is that right?</p> <p>13 A. That's correct, that would be the</p> <p>14 valuation used for September 22.</p> <p>15 Q. Would that include certain -- for</p> <p>16 certain securities valuations that were done as</p> <p>17 of September 30?</p> <p>18 A. As it was deemed there was no true</p> <p>19 difference between the 30th and 22nd, then there</p> <p>20 was still, yes, there would be a 30th in there,</p> <p>21 but there was no discernible material difference</p> <p>22 between the two valuations. So it was deemed</p> <p>23 appropriate still from December -- I mean,</p> <p>24 sorry, for September 22.</p> <p>25 Q. But my question was a very basic one,</p>
Page 144	Page 145
<p>1 Teague</p> <p>2 which is, even though it says September 22,</p> <p>3 included in that column for certain CUSIPs are</p> <p>4 values that were actually calculated on</p> <p>5 September 30th. Your additional explanation is,</p> <p>6 well, those September 30th values are not that</p> <p>7 different from September 22. Is that fair?</p> <p>8 MR. HUME: Object to the form of the</p> <p>9 question, and objection, asked and answered.</p> <p>10 You may answer the question.</p> <p>11 Q. Is that a fair way of capturing what</p> <p>12 you just said? I'm just trying to understand</p> <p>13 what you said.</p> <p>14 A. We could go back and look at the</p> <p>15 Independent Valuation document where I</p> <p>16 summarized how the valuation was performed, but</p> <p>17 the data in there that was for September 30th,</p> <p>18 it was deemed to be no -- it wasn't deemed to be</p> <p>19 materially different than the 22nd because the</p> <p>20 markets for those illiquid assets hadn't really</p> <p>21 moved.</p> <p>22 Q. You said you had a summary of the</p> <p>23 methodology, and you're referring to the bound</p> <p>24 document Exhibit 641A.</p> <p>25 A. 641.</p>	<p>1 Teague</p> <p>2 Q. You're referring to that two-page,</p> <p>3 three-page memo at the front of that document;</p> <p>4 is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. What in particular were you referring</p> <p>7 to when you were talking about September 30th</p> <p>8 versus September 22?</p> <p>9 A. That would only cover, based on this,</p> <p>10 the last bullet point on 0213991 for the PMTG</p> <p>11 assets.</p> <p>12 Q. Okay. So and if I -- I just want to</p> <p>13 understand what it is that you are summarizing</p> <p>14 there on that last bullet point on the page that</p> <p>15 ends 991 in Exhibit 641A.</p> <p>16 This is an explanation that appears</p> <p>17 under the Illiquid Assets section of that memo,</p> <p>18 correct?</p> <p>19 A. That is correct.</p> <p>20 Q. And this particular bullet point</p> <p>21 reads, "Haircut due to liquidity issues.</p> <p>22 Following logic was devised to best capture</p> <p>23 market price," and then there are two</p> <p>24 sub-bullets, correct? Right?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 146</p> <p>1 Teague</p> <p>2 Q. The first of the sub-bullet states,</p> <p>3 "Lehman assets which were sold (auctioned by the</p> <p>4 PMTG) prior to month-end are considered trades</p> <p>5 and therefore the traded price was applied with</p> <p>6 no haircut."</p> <p>7 In that sub-bullet, when you refer to</p> <p>8 assets which were sold, are you differentiating</p> <p>9 between assets that were sold outside of</p> <p>10 Barclays from assets that were sold internally</p> <p>11 within Barclays, or does that include assets</p> <p>12 which were sold both inside and outside?</p> <p>13 A. That includes -- this specifically was</p> <p>14 for assets that, in this case, were sold</p> <p>15 internally to another desk within Barclays. So</p> <p>16 the assets here were sold out to the PMTG desk.</p> <p>17 I believe, as you can see here, so the</p> <p>18 marks were used for where they were sold, the</p> <p>19 traded price, and if the security was not</p> <p>20 auctioned by September 30, the desk mark was</p> <p>21 used.</p> <p>22 Q. All right. And the sales, the</p> <p>23 internal sales that occurred, would have</p> <p>24 occurred after the 22nd of September, correct?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 147</p> <p>1 Teague</p> <p>2 Q. So, nonetheless, the value for those</p> <p>3 securities that were sold after 22nd of</p> <p>4 September, internally sold within Barclays,</p> <p>5 would be captured and those trade prices would</p> <p>6 be reflected in column D on the spreadsheet</p> <p>7 we're looking at on 86B, correct?</p> <p>8 A. That is correct. And clarified by the</p> <p>9 Lehman opening balance sheet document would take</p> <p>10 those along with.</p> <p>11 Q. Is it the case that every time you</p> <p>12 have an internal sale of a security to a trading</p> <p>13 desk within Barclays you used the traded price</p> <p>14 as the acquisition date price for that asset?</p> <p>15 A. The only assets it was done for were</p> <p>16 the illiquid assets in the PMTG desk. Any</p> <p>17 trading activity that happened for the other</p> <p>18 assets post-acquisition was not part of the</p> <p>19 opening balance sheet price.</p> <p>20 Q. So but within the illiquid PMTG assets</p> <p>21 where you did follow this methodology, it was</p> <p>22 the case that every time there was an internal</p> <p>23 sale, that is the price you used, you used the</p> <p>24 internal sale price, or did you use some other</p> <p>25 price, even though there was an internal sale of</p>
<p style="text-align: right;">Page 148</p> <p>1 Teague</p> <p>2 an illiquid PMTG asset?</p> <p>3 A. To the best of my knowledge, the sheet</p> <p>4 is broken out to show any trading activity, and</p> <p>5 that trading activity is then utilized in the --</p> <p>6 in the final value as represented on this page,</p> <p>7 summary page of the Excel spreadsheet.</p> <p>8 Q. As you sit here are you aware of any</p> <p>9 instances where IPV assigned a value to an asset</p> <p>10 that was sold internally by PMTG, assigned a</p> <p>11 value that was lower than the traded price?</p> <p>12 A. Can you restate the question?</p> <p>13 Q. Sure.</p> <p>14 (Record read.)</p> <p>15 A. I couldn't say off the top of my head.</p> <p>16 Q. Would you expect that to have</p> <p>17 happened, given your methodology?</p> <p>18 MR. HUME: Objection to the form.</p> <p>19 A. Without reviewing the numbers, I</p> <p>20 wouldn't care to guess. I'm not quite sure --</p> <p>21 I'm not quite sure where -- apologies -- where</p> <p>22 the question is going. I don't have the data in</p> <p>23 front of me to review it.</p> <p>24 Q. Well, if you go over to the PMTG tab</p> <p>25 in Exhibit 86B, that should capture</p>	<p style="text-align: right;">Page 149</p> <p>1 Teague</p> <p>2 CUSIP-by-CUSIP the valuation for each of those</p> <p>3 securities, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And to the extent that any of the</p> <p>6 securities there were sold internally, that</p> <p>7 spreadsheet or that tab would indicate what</p> <p>8 price you had used for valuation purposes,</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. Because those tabs all roll up into</p> <p>12 the Summary tab, correct?</p> <p>13 A. That's the case, yes.</p> <p>14 Q. So, I mean, at the risk of seeing if</p> <p>15 this works, let's try that. So I have gone into</p> <p>16 the PMTG tab of the same spreadsheet, 86B, which</p> <p>17 is Movants' 102 native.</p> <p>18 Where would it be indicated whether or</p> <p>19 not there was an internal sale of that security,</p> <p>20 taking any one of these lines?</p> <p>21 A. That column that you're in now.</p> <p>22 Q. Column AF?</p> <p>23 A. Yes.</p> <p>24 Q. It says "Market Value Sales"?</p> <p>25 A. Correct.</p>

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<p>1 Teague</p> <p>2 Q. The fact that a number appears in that</p> <p>3 column, does that indicate to you that that's a</p> <p>4 security for which there has been a trade?</p> <p>5 A. Yes.</p> <p>6 Q. And what it indicates to you is that</p> <p>7 trade was an internal trade?</p> <p>8 A. It doesn't necessarily indicate that</p> <p>9 it was an internal trade. It indicates that it</p> <p>10 was a trade.</p> <p>11 Q. Okay. Is there some other part of</p> <p>12 this spreadsheet or another tab in this</p> <p>13 spreadsheet that differentiates internal trades</p> <p>14 from external trades?</p> <p>15 A. I do not have that information in this</p> <p>16 spreadsheet.</p> <p>17 Q. Do you know that from any other</p> <p>18 spreadsheet, whether there's a document that</p> <p>19 differentiates internal and external sales?</p> <p>20 A. I do not know.</p> <p>21 Q. Is it fair to say that for purposes of</p> <p>22 your analysis you treated internal and external</p> <p>23 sales, at least within this category, the PMTG</p> <p>24 category, as the same?</p> <p>25 MR. HUME: Objection. Lacks</p>	<p>1 Teague</p> <p>2 foundation. Isn't this -- well, go ahead.</p> <p>3 A. I mean, this is, you know, as per this</p> <p>4 spreadsheet, basically the thought process was</p> <p>5 we're looking at the most illiquid assets. Any</p> <p>6 trading activity was deemed to be the best</p> <p>7 indication of where an asset would clear, most</p> <p>8 important thing, right, when trying to determine</p> <p>9 a market price is to have a market, as the</p> <p>10 majority of the assets in this pool have no</p> <p>11 market, no discernible market, no discernible</p> <p>12 market data because the trade data -- I'm sorry,</p> <p>13 the trade's prior price was used as the level</p> <p>14 for which we independently valued the assets.</p> <p>15 Q. And following that methodology, you</p> <p>16 did not differentiate between internal sales</p> <p>17 within Barclays from external sales that were</p> <p>18 sales by Barclays to a third party?</p> <p>19 MR. HUME: Objection. Lacks</p> <p>20 foundation. These are Rich Landreman's</p> <p>21 assets, if I understand correctly, from the</p> <p>22 prior testimony.</p> <p>23 A. Yes.</p> <p>24 MR. HUME: I'm objecting as lack of</p> <p>25 foundation on that basis.</p>
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<p>1 Teague</p> <p>2 MR. TAMBE: I would prefer if you just</p> <p>3 kept your objection to a legal basis as</p> <p>4 opposed to signaling to the witness what he</p> <p>5 might say in his answer.</p> <p>6 MR. HUME: I'm suggesting to you that</p> <p>7 your question lacks foundation.</p> <p>8 MR. TAMBE: If you want to explain</p> <p>9 something to me, you can do it outside the</p> <p>10 earshot of the witness, which would be more</p> <p>11 appropriate.</p> <p>12 Q. The next question I have is, is there</p> <p>13 any way for you to tell from looking at this</p> <p>14 spreadsheet whether the price that was</p> <p>15 ultimately used by Barclays IPV to value one of</p> <p>16 these CUSIPs is different from the price that</p> <p>17 was -- that appears in the "MV Sales" column or</p> <p>18 that is implied by the "MV Sales" column?</p> <p>19 A. If you go to your left, I could see.</p> <p>20 Q. Just tell me when to stop.</p> <p>21 A. You can stop there.</p> <p>22 Q. You're comparing column AA to column</p> <p>23 AE?</p> <p>24 A. Just one moment.</p> <p>25 So column AA will equal column AE.</p>	<p>1 Teague</p> <p>2 Column X was the original --</p> <p>3 Can you go to your left? Keep going.</p> <p>4 9/19. Pardon me. So column X was the market</p> <p>5 value originally put on those assets by Product</p> <p>6 control as a cross-reference to the pricing at</p> <p>7 which it was sold.</p> <p>8 Q. Okay. And so let's just look at the</p> <p>9 row that we're looking at right now, which is</p> <p>10 row 6 in the PMTG tab of 86B, and column T for</p> <p>11 that CUSIP row, which is row number 6, has a</p> <p>12 BoNY price of 73.04, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Has a PCG price of 19.16?</p> <p>15 A. Yes.</p> <p>16 Q. Right?</p> <p>17 A. Correct.</p> <p>18 Q. Do you know where that PCG price is</p> <p>19 derived from?</p> <p>20 A. I would not be the proper person to</p> <p>21 question. That would be definitely Rich</p> <p>22 Landreman.</p> <p>23 Q. Column W is "BoNY Market Value, 9/19."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>

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<p>1 Teague</p> <p>2 Q. And then that's simply using the BoNY</p> <p>3 price times the quantity?</p> <p>4 A. Yes.</p> <p>5 Q. Times a factor, if there's a factor?</p> <p>6 A. Correct.</p> <p>7 Q. Column X is the PCG market value using</p> <p>8 PCG price from column U, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Then you have column Z, which does not</p> <p>11 have a heading.</p> <p>12 Column AA, which has a PMTG PX?</p> <p>13 A. Yes.</p> <p>14 Q. 9/30, correct?</p> <p>15 A. Correct.</p> <p>16 Q. For this particular row, that carries</p> <p>17 a value of 72, and if we go over to column AE,</p> <p>18 "Sale Price," that has a value of 72 for that</p> <p>19 particular security?</p> <p>20 A. Yes.</p> <p>21 Q. So, in that instance, would you say</p> <p>22 that what this calculation is showing is that</p> <p>23 the sale price is the price that was used for</p> <p>24 determining the value that rolls up into the</p> <p>25 acquisition balance sheet?</p>	<p>1 Teague</p> <p>2 A. That's correct. So the higher price</p> <p>3 assigned by the desk would have been the price</p> <p>4 assigned for the opening balance sheet.</p> <p>5 Q. Okay. And the question is, are you</p> <p>6 aware of any instances where a lower price was</p> <p>7 assigned, a price lower than the desk price, the</p> <p>8 traded price was used?</p> <p>9 A. The desk price would have been the</p> <p>10 price utilized for the opening balance sheet I</p> <p>11 believe in all situations.</p> <p>12 Q. Would it have been wrong to use a</p> <p>13 lower price than the desk price?</p> <p>14 A. I don't see why we would have. I</p> <p>15 mean, that's not how the spreadsheet is set up.</p> <p>16 The spreadsheet is set up to take the desk price</p> <p>17 for 9/30.</p> <p>18 Q. All right. Going back to 86B, the</p> <p>19 Summary tab, you've got PCG value of 42 -- I'm</p> <p>20 looking at row 14, column D. You've got a PCG</p> <p>21 value of 42.578 billion, do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. But that number gets adjusted further,</p> <p>24 correct? To come up with the acquisition value</p> <p>25 for those assets?</p>
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<p>1 Teague</p> <p>2 A. Yes.</p> <p>3 Q. And the further adjustment you make is</p> <p>4 you apply the liquidity calculation from column</p> <p>5 F; is that right?</p> <p>6 A. That's correct.</p> <p>7 Q. And so the final values that you</p> <p>8 derive for the non-JPM assets are row 14, column</p> <p>9 E, which is \$40.7 billion, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. The liquidity value adjustments that</p> <p>12 are reflected on the summary sheet of 86B, just</p> <p>13 to confirm, those are derived by applying those</p> <p>14 liquidity factors that we had talked about in</p> <p>15 the morning?</p> <p>16 A. So each of the experts by the --</p> <p>17 within Independent Valuations, based on the</p> <p>18 asset class, would have performed analysis to</p> <p>19 determine appropriate bid/offer for which to</p> <p>20 capture bid for the market value for each of the</p> <p>21 asset classes.</p> <p>22 Q. What experts?</p> <p>23 A. So each of the IVC individuals, like,</p> <p>24 for instance, for my world, people within my</p> <p>25 team would have performed analysis for</p>	<p>1 Teague</p> <p>2 corporates, somebody would have performed</p> <p>3 analysis for munis, somebody would have</p> <p>4 performed analysis for agencies, and that would</p> <p>5 be data that, yes, we utilized then to calculate</p> <p>6 a bid/offer.</p> <p>7 For Rich's team, within his team, that</p> <p>8 would be how it would have worked for the</p> <p>9 securitized products.</p> <p>10 Q. And the net result of this, with</p> <p>11 respect to non-JPM assets, was that assets that</p> <p>12 were valued by the Bank of New York at 45</p> <p>13 billion were valued by Barclays at 40.69</p> <p>14 billion; is that right?</p> <p>15 A. Yes, but there was a time period of</p> <p>16 difference there between the two dates.</p> <p>17 Q. And the time period difference that</p> <p>18 you're alluding to is the BoNY values were as of</p> <p>19 what date, sir?</p> <p>20 MR. HUME: Objection. Lacks</p> <p>21 foundation.</p> <p>22 A. I'm not quite sure. I believe it was,</p> <p>23 if we go back to one of the other tabs --</p> <p>24 Q. Pick any tab?</p> <p>25 A. Try the Rates tab, I guess.</p>

1 Teague
2 Q. Because you would be familiar with the
3 Rates tab, right?
4 A. Yes. I don't know whether it would be
5 on that tab.
6 If you go to the right. Sorry. Keep
7 going to your left, actually.
8 I take it it was 9/19 or 9/18 based on
9 the dataset on the top, where it says cell F2 on
10 that tab.
11 Q. Cell F2, okay. So I'm on cell 2. So
12 you see that as an indication that those are the
13 BoNY prices as of 9/19?
14 A. That's correct.
15 Q. Okay. So the BoNY prices are as of
16 9/19, and you said that your prices, the
17 Barclays prices are as of end of day 9/22, as
18 further explained by your memo on methodology
19 followed?
20 A. Yes.
21 Q. Sir, I've now handed you a one-page
22 document previously marked as Deposition Exhibit
23 87B. I have pulled up on the screen the native
24 version of that document, which is marked as
25 Movants' Trial Exhibit 103N, for native.

1 Teague
2 coordinating the assets for the spreadsheet,
3 specifically for row 6 through rows 10. Rich
4 Landreman's team would have handled rows 13 and
5 14 labeled "PMTG."
6 Q. In terms of liquidity adjustments that
7 are reflected in column G for these JPM assets?
8 A. Uh-huh.
9 Q. What was the approach taken by you
10 with respect to the assets that you valued to
11 make liquidity adjustments? Was it the same as
12 you had done with the other assets? Was there a
13 different approach with these assets?
14 A. I'd have to go back again to the
15 Lehman opening balance sheet, Barclays Capital
16 Valuation Methodology document.
17 Q. So if you have it before you, that's
18 the bound document, and where specifically in
19 that? How do you address this issue?
20 A. Page 0213992.
21 Q. And for the assets that you valued,
22 what part of this page refers to the liquidity
23 approach that you took?
24 A. Just a moment. I would have been
25 involved again in the, what would be considered

1 Teague
2 Looking first at the hard copy
3 document, Exhibit 87B, do you recognize that as
4 a summary of the valuation of the JPM Chase
5 assets?
6 A. Yes, I do.
7 Q. And maybe you should read on the
8 screen, do you recognize the summary sheet that
9 appears there as the same summary in electronic
10 format?
11 A. Yes.
12 Q. And again, to confirm, column D, line
13 18, the \$5.9 billion number?
14 A. Yes.
15 Q. Is your understanding that that is the
16 value of the JPM assets as of September 30?
17 A. Yes. I'd have to go back to the other
18 sheets, but yes, that appears to be the case.
19 Q. And that the same assets are valued by
20 Barclays as of December 22 at \$3.739 billion,
21 which is column F, line 18; is that right?
22 A. Yes.
23 Q. What role did you play in the
24 valuation of these assets, the JPM Chase assets?
25 A. I would have been involved in

1 Teague
2 the more liquid assets portion, and Rich
3 Landreman would have been involved in anything
4 regarding PMTG for the illiquid assets.
5 Q. Can I stop you there for a second? Do
6 you generally bucket it that way, that the PMTG
7 assets, in your view, were generally the
8 illiquid assets, or are there liquid and
9 illiquid assets within PMTG?
10 A. There could be some. I mean, again,
11 it goes down to the -- the analysis would be the
12 Haircut tab on -- where it breaks down the
13 specific bid/offers by product. So it can be
14 cross-referenced to what bid/offer was applied
15 to which product would help give an insight.
16 Q. Okay. Again, just looking at the PMTG
17 rows in this spreadsheet, 87B, Movants' 103
18 Native, is it your understanding that for the
19 PMTG securities covered by this spreadsheet,
20 that it's Mr. Landreman who would have been
21 responsible for determining what the liquidity
22 haircuts were for these securities?
23 A. Yes.
24 Q. And that you would have been
25 responsible for determining the liquidity

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<p>1 Teague</p> <p>2 haircuts for rows 6 through 10?</p> <p>3 A. Yes, my team would have -- would have</p> <p>4 performed the analysis, each of the individuals</p> <p>5 who has the expertise in each of the product</p> <p>6 classes.</p> <p>7 Q. And the approach that you took on rows</p> <p>8 6 through 10, the liquidity approach, liquidity</p> <p>9 adjustment approach you took with respect to</p> <p>10 these assets, was it a different approach than</p> <p>11 the one you had taken with respect to the</p> <p>12 initial inventory?</p> <p>13 A. There was some slight differences. We</p> <p>14 would have to go and look at the Liquidity tab.</p> <p>15 Just one moment.</p> <p>16 Q. The Liquidity tab in this spreadsheet?</p> <p>17 We can go there?</p> <p>18 A. Yes, I believe that might --</p> <p>19 Q. So we're now on the Liquidity tab</p> <p>20 which has the liquidity haircuts expressed as</p> <p>21 percentages, do you see that?</p> <p>22 A. Yes. Yes, I do. So this is -- these</p> <p>23 are the -- these are the bid/offer adjustments</p> <p>24 that were again applied by product type.</p> <p>25 Q. And for the products that you valued,</p>	<p>1 Teague</p> <p>2 what did you do to ensure that the bid/offer</p> <p>3 adjustments or the liquidity adjustments that</p> <p>4 you were applying as of December 22 were</p> <p>5 consistent with the liquidity adjustments that</p> <p>6 you had applied as of September 22?</p> <p>7 MR. HUME: Objection to the form of</p> <p>8 the question.</p> <p>9 A. So some of the differences were for</p> <p>10 corporates, as per this page. The majority or</p> <p>11 much of the data was from TRACE. So we were</p> <p>12 using pricing data for what was clearing, which</p> <p>13 was either minimum of third party or TRACE.</p> <p>14 Much of the data was actually TRACE.</p> <p>15 And for munis, there was no bid/offer</p> <p>16 applied for the 12/22 assets if you look at the</p> <p>17 second page.</p> <p>18 Q. So for the munis you say no bid/offer</p> <p>19 adjustment was applied. Why was that?</p> <p>20 A. For the muni market, the market itself</p> <p>21 had showed signs of stability, and there was</p> <p>22 also not -- I don't believe there was a, as far</p> <p>23 as acquisition one for the second piece, I don't</p> <p>24 believe there was many munis, either. But for</p> <p>25 the most part, it was the dataset itself was</p>
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<p>1 Teague</p> <p>2 deemed much more stable.</p> <p>3 Q. In your memo, which is in Exhibit 641,</p> <p>4 you say for munis, "No bid/offer FTID and</p> <p>5 research pricing data applied to valued</p> <p>6 product." Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And FTID is a reference to what?</p> <p>9 A. FTID is a vendor.</p> <p>10 Q. And it's a vendor that you used to</p> <p>11 obtain prices from?</p> <p>12 A. Correct.</p> <p>13 Q. And you believed those to be reliable</p> <p>14 prices?</p> <p>15 A. So the 12/22 utilized that along with</p> <p>16 research data. So --</p> <p>17 Q. And the question was you believe FTID</p> <p>18 to be a reliable source of data?</p> <p>19 A. It can be when the markets are stable,</p> <p>20 yes.</p> <p>21 Q. So on December 22, it was reliable?</p> <p>22 A. On December 22, for the munis at</p> <p>23 products, munis were deemed to be stable, so IDC</p> <p>24 was deemed appropriate.</p> <p>25 Q. Did you use similar data for September</p>	<p>1 Teague</p> <p>2 19 and September 22?</p> <p>3 A. For munis?</p> <p>4 Q. For munis.</p> <p>5 A. For munis, the IDC price was not</p> <p>6 deemed reliable. A different analysis was</p> <p>7 performed for the munis based on the markets.</p> <p>8 Q. What did you do to determine that IDC</p> <p>9 was not reliable September 19 to September 22?</p> <p>10 A. We looked at the market information</p> <p>11 that we had. We also spoke with the trading</p> <p>12 desk, the traders for -- if you go back to</p> <p>13 this -- the trader for munis was saying that</p> <p>14 there was, you know, he placed little faith in</p> <p>15 the, you know, numbers coming out of FTID at the</p> <p>16 time, and working with the desk, that's where</p> <p>17 the marks for 9/22 came from.</p> <p>18 We did a haircut based on the market</p> <p>19 analysis of how much market prices were moving</p> <p>20 in the munis market because the underlying</p> <p>21 prices were stale.</p> <p>22 Q. Maybe I missed this in your answer.</p> <p>23 So for the 9/19, 9/22 timeframe, what prices</p> <p>24 were you using for munis?</p> <p>25 A. For munis, it was a -- the trader</p>

1 Teague
2 mark, essentially, which was a haircut to the --
3 our own front office trader view as well as
4 Independent Valuation view of where the market
5 was for 9/22 looking at the haircut that we
6 applied. So the overall haircut was I believe 5
7 to 8 percent based on the drop in the munis.
8 That is a separate document, I believe, where
9 there's -- that goes through the analysis on the
10 munis.
11 Q. Are you aware that certain munis were
12 priced in that time period, 9/19-9/22, by you at
13 .0001?
14 A. I believe there was a position that we
15 had no external data on that, yes, I believe
16 that did happen.
17 Q. So you basically priced it at close to
18 zero?
19 A. As a placeholder we didn't know the --
20 we didn't have any data at all on the document.
21 Q. And if it was meant to be a
22 placeholder, what were your plans for updating
23 that placeholder?
24 A. I believe that was -- I don't have
25 that in front of me. That was one of the assets

1 Teague
2 A. From a valuation perspective, I have
3 not reopened the opening balance sheet. I think
4 that's really more something from the accounting
5 perspective or if the firm has any opinion on
6 that.
7 Q. Have you spoken with anyone about
8 going back and restating the acquisition balance
9 sheet to correct this oversight that's been
10 brought to your attention?
11 A. No, I have not.
12 Q. Do you know whether others within
13 Barclays have had that discussion?
14 A. No, I do not know if that discussion
15 has occurred.
16 Q. Putting aside this particular example
17 about the .0001 pricing, are there other
18 oversights that we have brought to your
19 attention?
20 A. Not that I can recall. I believe the
21 munis were a, out of the 12,000 securities that
22 we reviewed, there was an oversight on my part
23 or on my team's part for less than a handful of
24 muni positions.
25 I think those positions also were,

1 Teague
2 that was brought up by the previous deposition.
3 I believe that was just an oversight on our
4 side.
5 Q. I'm sorry, what was an oversight?
6 Pricing it at .0001 was an oversight?
7 A. Yes, I believe that was an oversight
8 on our part. We had no data to mark those
9 assets.
10 Q. What have you done to correct that
11 oversight?
12 A. The oversight itself was brought up
13 after the opening balance sheet was closed.
14 Q. How was it brought up? Who brought it
15 up?
16 A. The oversight -- I only became aware
17 of it recently.
18 Q. Well, you became aware of it because
19 of the testimony that was provided in this case,
20 right?
21 A. Correct.
22 Q. So we brought it to your attention?
23 A. That's correct.
24 Q. And so now that we brought it to your
25 attention, what have you done about it?

1 Teague
2 correct me if I'm wrong, I believe they were all
3 auction rate. So there was no data outstanding.
4 Q. On the point of no other data
5 outstanding, at least some of the muni bonds at
6 issue that were valued at .00001 by your group
7 were obligations of the State of Massachusetts,
8 does that ring a bell?
9 A. Yes.
10 Q. Did you --
11 A. I think it was one. I don't think it
12 was some.
13 Q. So one. The one obligation that you
14 recall being a State of Massachusetts
15 obligation, did you look to see how
16 Massachusetts' general obligation bonds were
17 trading, for example?
18 A. Again, the handful of securities out
19 of the 12,000 securities that you are
20 referencing, that was an oversight on our side.
21 The volume of assets that we were going through
22 at that moment, we did have an oversight on
23 munis where there was assets that we had no
24 market data on that were marked all the way
25 down.

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<p>1 Teague</p> <p>2 Q. Again, I'm not sure how that -- maybe</p> <p>3 you have answered my question, but it's not</p> <p>4 clear to me. Did you look to see how other</p> <p>5 Massachusetts obligations were trading?</p> <p>6 A. Again, out of the 5 positions you're</p> <p>7 talking to versus 12,000 assets that came into</p> <p>8 the firm, there was an oversight on our part.</p> <p>9 Q. So the answer to my question is you</p> <p>10 didn't look at other pricing data for other</p> <p>11 bonds issued by the State of Massachusetts?</p> <p>12 A. No, we did not at that moment look at</p> <p>13 State of Massachusetts for 5 positions out of</p> <p>14 12,000 securities that we priced.</p> <p>15 Q. And it would not have been improper</p> <p>16 for you to have looked at those, you just didn't</p> <p>17 do it, correct?</p> <p>18 A. If we performed that analysis, it</p> <p>19 would have been something above the, you know,</p> <p>20 work that had been performed, and that analysis</p> <p>21 was not performed.</p> <p>22 Q. Coming back to Exhibit 87B, the</p> <p>23 summary, the Summary tab on the electronic</p> <p>24 document, which is the hard copy document in</p> <p>25 front of you, the decision to value the JPM</p>	<p>1 Teague</p> <p>2 Chase assets as of December 22, 2008, that was a</p> <p>3 decision made by Barclays, correct?</p> <p>4 MR. HUME: Objection. Lacks</p> <p>5 foundation.</p> <p>6 A. I can't speak to the date and the</p> <p>7 decision for the date.</p> <p>8 Q. So, just so I understand what your</p> <p>9 knowledge or understanding is, then, you were</p> <p>10 simply told to value those as of December 22?</p> <p>11 A. That's correct. I believe that's when</p> <p>12 they came -- when the delivery, or I believe</p> <p>13 that's when they were delivered. I'm not quite</p> <p>14 sure.</p> <p>15 Q. And who directed you to value those as</p> <p>16 of December 22?</p> <p>17 A. That would have been Marcus Morton.</p> <p>18 Q. Do you recall having any discussions</p> <p>19 with Mr. Morton about whether it was appropriate</p> <p>20 to value these assets as of the 22 of December?</p> <p>21 A. Versus?</p> <p>22 Q. Versus the 22nd of September.</p> <p>23 A. If they hadn't come in, I don't think</p> <p>24 we would have valued them. No, I didn't really</p> <p>25 have any specific conversations of that nature.</p>
Page 172	Page 173
<p>1 Teague</p> <p>2 Q. Did you have any discussions or</p> <p>3 conversations with Price Waterhouse on that</p> <p>4 topic?</p> <p>5 A. No. The analysis we show the JP</p> <p>6 assets as of that date, but the valuations were</p> <p>7 performed as of September 22.</p> <p>8 Q. And is it your understanding that</p> <p>9 these JPM assets which were valued as of</p> <p>10 December 22 were assets received in lieu of the</p> <p>11 \$7 billion in cash that was being reflected in</p> <p>12 certain accounting documents as of September 22,</p> <p>13 2008?</p> <p>14 A. Yes. The assets were to be delivered</p> <p>15 in place of cash, which made we very upset,</p> <p>16 because I prefer cash because I don't have to do</p> <p>17 any further valuations.</p> <p>18 Q. And in fact, in some of your early</p> <p>19 work you had a placeholder for \$7 billion of</p> <p>20 cash?</p> <p>21 A. Yes.</p> <p>22 Q. Did you have any discussions with</p> <p>23 Marcus Morton or anyone else within Barclays as</p> <p>24 to how the decision was made to accept these</p> <p>25 securities in lieu of the \$7 billion of cash?</p>	<p>1 Teague</p> <p>2 A. I think that was something above and</p> <p>3 beyond, as far as I was concerned. It was more</p> <p>4 so somehow JPMorgan had managed to provide us</p> <p>5 with assets that they potentially no longer</p> <p>6 wanted and, in place, they took \$7,000 in cash.</p> <p>7 Q. You mean \$7 billion in cash.</p> <p>8 A. \$7 billion in cash, yes.</p> <p>9 Q. My question was did you have any</p> <p>10 discussions with Marcus Morton or anyone else</p> <p>11 within Barclays on that topic?</p> <p>12 A. Why we received this instead of \$7</p> <p>13 billion?</p> <p>14 Q. Yes.</p> <p>15 A. I think the overall view is, as I</p> <p>16 stated, that, well, this is what ended up</p> <p>17 happening at the end of the day. This is what</p> <p>18 ended up being delivered as opposed to cash.</p> <p>19 Gary Romain would probably be best able to speak</p> <p>20 to why we received this versus why we received</p> <p>21 cash.</p> <p>22 Q. The name you mentioned was Gary</p> <p>23 Romain?</p> <p>24 A. Yes.</p> <p>25 Q. Explain to me what your interaction or</p>

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<p>1 Teague</p> <p>2 level of interaction was with Gary Romain</p> <p>3 through this process. What were you doing?</p> <p>4 What's he doing? How did the two of you</p> <p>5 interact on the acquisition balance sheet?</p> <p>6 A. I would -- Gary oversaw, I take it,</p> <p>7 the whole -- I'm trying to think of the right</p> <p>8 wording for it. My part was just the -- I was</p> <p>9 consolidating the assets themselves, the</p> <p>10 valuations, and that was provided to Gary to</p> <p>11 include in all of his data since his scope was</p> <p>12 much larger.</p> <p>13 Q. Is it your understanding that Gary was</p> <p>14 doing any independent valuation of the assets</p> <p>15 other than what the IPV group was doing?</p> <p>16 A. Yeah, no, Gary wouldn't have been</p> <p>17 involved in that aspect.</p> <p>18 Q. So Gary would take, when he needed to</p> <p>19 plug in the value of the assets, he would take</p> <p>20 your output?</p> <p>21 A. Yes, that's the case.</p> <p>22 Q. We talked this morning about</p> <p>23 conversations, conference calls that Stephen</p> <p>24 King was on, you were on, others may have been</p> <p>25 on.</p>	<p>1 Teague</p> <p>2 Do you recall Gary Romain being a</p> <p>3 party to any of those conference calls?</p> <p>4 A. Yes, Gary would have been on some of</p> <p>5 the conference calls.</p> <p>6 Q. And I apologize if I have asked you</p> <p>7 this in terms of the timing of those calls. Do</p> <p>8 you recall any of those conference calls taking</p> <p>9 place the week of the 15th of September, 2008,</p> <p>10 the week of the 22nd of September 2008?</p> <p>11 MR. HUME: Objection to form.</p> <p>12 A. I don't recollect.</p> <p>13 Q. So it might have been, you just don't</p> <p>14 remember?</p> <p>15 A. Potentially. I would tend to believe</p> <p>16 it was later on in the process, but I don't</p> <p>17 recollect.</p> <p>18 Q. In terms of the decision-making</p> <p>19 process, the IPV group does its analysis, comes</p> <p>20 up with values for these assets, you collect</p> <p>21 those values and then you handed those over to</p> <p>22 Gary Romain; is that right?</p> <p>23 A. Yes.</p> <p>24 Q. Were there any values that were</p> <p>25 proposed by IPV that Gary did not accept or</p>
Page 176	Page 177
<p>1 Teague</p> <p>2 others objected to?</p> <p>3 A. No, that wasn't Gary's role in the</p> <p>4 process.</p> <p>5 Q. Was this process of valuing at least</p> <p>6 the initial inventory, putting aside the JPM</p> <p>7 assets, the initial inventory, was it an</p> <p>8 iterative process? Did you have initial</p> <p>9 valuations that were then refined and updated</p> <p>10 through the course of October and November,</p> <p>11 December?</p> <p>12 A. Yes, the numbers had changed between,</p> <p>13 say, I don't know, September 22nd, 23rd and</p> <p>14 later on. Much of it had to do also with the --</p> <p>15 in confirming the delivered assets themselves,</p> <p>16 scrubbing data, ensuring you had the right</p> <p>17 ISINs, ensuring you had the right market</p> <p>18 information as far as not even just saying third</p> <p>19 party, but the dataset required for the</p> <p>20 structured products, things of that nature, that</p> <p>21 you -- it took some time to scrub out of the</p> <p>22 12,000 assets.</p> <p>23 Q. In the time period, the 22nd of</p> <p>24 September through the end of September, do you</p> <p>25 recall there being uncertainty or confusion</p>	<p>1 Teague</p> <p>2 about the actual assets that had been</p> <p>3 transferred, CUSIPs, reconciling lists, things</p> <p>4 like that?</p> <p>5 A. I believe Operations were continually</p> <p>6 updating reconciliations for quite some time,</p> <p>7 specifically on the equity side.</p> <p>8 Q. Other than reconciliation issues and</p> <p>9 the issues you described with respect to the</p> <p>10 structured products, were there any approach or</p> <p>11 method changes or policy changes that were</p> <p>12 responsible for the changing valuations as you</p> <p>13 moved through October, November and into</p> <p>14 December?</p> <p>15 A. Just refinements.</p> <p>16 Q. What kinds of refinements?</p> <p>17 A. Just in the -- in the data itself,</p> <p>18 more putting a structure around the data, such</p> <p>19 as the Lehman opening balance sheet valuation</p> <p>20 methodology, trying to document the thought</p> <p>21 process of the -- of how the spreadsheets were</p> <p>22 oriented; try to, you know, where possible,</p> <p>23 ensure consistency.</p> <p>24 Just basically show the robustness of</p> <p>25 the process that was performed in such a manner</p>

1 Teague
2 where it would be -- I didn't know it would be
3 me, but it would be something where a person
4 would be able to speak to it one day.
5 And that's basically, you know, had a
6 lot -- a lot of the data that was done at that
7 time was also helpful in the discussions with
8 PwC.
9 Q. Was any of the data or any of the
10 analysis prepared specifically to respond to
11 questions raised by PwC?
12 A. I'd say a lot of it was a -- a
13 continual discussion more so than a creation of
14 information for PwC. It was they were basically
15 working closely with Barclays from time to time
16 with the valuation team to get a deeper
17 understanding of the process and the analysis
18 that was being performed.
19 Q. Well, they would have questions about
20 why you did what you did, correct?
21 A. That's correct.
22 Q. They would ask you to support why you
23 did what you did, correct?
24 A. Yes, there would have been e-mails
25 back and forth to -- and they would have sat

1 Teague
2 Q. Were you party to communications with
3 PwC in which that was a topic of discussion, the
4 picking of dates for valuation of assets?
5 A. No.
6 Q. Where they basically said to you
7 that's not their job, that's your job?
8 A. That's -- any discussions of that
9 nature would not happen at my level, to be
10 honest. I was performing the independent
11 valuations.
12 (Deposition Exhibit 869, a document
13 bearing Bates Nos. BCI-EX-(S)-00207919
14 through 920, with attachment, marked for
15 identification, as of this date.)
16 Q. I've had placed before you, sir, a
17 document marked Exhibit 869. It's an e-mail
18 exchange that you are involved in. It has a
19 spreadsheet attached to it which has been
20 printed out from the native format. Take a
21 minute to look at it. I'll ask you some
22 questions about it.
23 (Document review.)
24 A. This is a piggyback of a front office
25 view versus the sheets you were looking at were

1 Teague
2 down with us. So there was -- there was
3 in-depth conversations that would have occurred.
4 Q. And you would provide the information
5 they were looking for? You would provide the
6 backup or the data to answer their questions; is
7 that right?
8 A. Correct. And then most of that data
9 would then be consolidated in one place, for
10 instance, the Liquidity tab or something of that
11 nature, to help provide more clarity going
12 forward.
13 Q. And just to be clear, PwC wasn't
14 telling you what liquidity adjustments to make,
15 correct? They were asking you to explain what
16 you had done?
17 A. That's correct. They were --
18 Q. Similarly, PwC wasn't telling you what
19 valuation dates to use for particular assets;
20 they were asking you to explain why you had
21 picked the ones that you had?
22 MR. HUME: Objection. Lacks
23 foundation.
24 A. I couldn't talk to that. Again, I
25 received no direction from that aspect.

1 Teague
2 my view. I don't think -- at the time, I think
3 there was changes made, being made to this
4 document, but then over the coming weeks, you
5 see this format, which is our document.
6 Q. Okay. Let me ask you some questions
7 about it.
8 A. Sure.
9 Q. So the cover e-mail, e-mails, are as
10 of October 10, 2008. Do you see that?
11 A. Yes.
12 Q. And what you were just saying is this
13 is a work in progress that evolves over time and
14 takes on the format that we see in 86B and 87B,
15 right?
16 A. Yes.
17 Q. What I want to draw your attention to
18 is the last page of this exhibit, which is the
19 printout of the Summary tab from the
20 spreadsheet. There's a little footer you will
21 see that says "Summary."
22 A. Okay.
23 Q. Can you read that?
24 A. Yes. Yes.
25 Q. And if you'll look at all the way over

1 Teague
2 What did you mean by "overrides"?
3 A. Well, for -- so the rows 12, 14 and
4 18, 14 doesn't look like there's anything there,
5 to be honest, and 18 looks like there's nothing
6 there. So I'm not quite sure. I guess it means
7 this page, but again, looking up at the
8 spreadsheet, row 12 has PMTG positions in there,
9 and then -- sorry, rows 14 and 18, those cells
10 for column F are blank. So I can't provide any
11 clarity since two of the three are blank.
12 Q. Well, let's see if it refers to some
13 other sheet -- tab in the spreadsheet. I just
14 want to get an understanding of what you meant
15 by "overrides for PMTG."
16 What is it that PMTG is overriding?
17 The books and records or some other entity?
18 A. It would have been, I take it, their
19 pricing that they are putting in for September
20 30th. Again, the analysis is regarding the, if
21 you look at the next section, it's just a desk
22 marking values for September 30. I take it, as
23 all of assets had not been booked yet, they
24 potentially just put in marks.
25 So, apologies. The logic here would

1 Teague
2 just be I don't think this is to clarify
3 anything to do with the opening balance sheet,
4 per se, as much as we were trying to get the
5 desk values for September 30th. I mean, they're
6 sheets of both, but the commentary is regarding
7 the September 30th numbers.
8 Q. Okay. And at some point you end up
9 taking those September 30th numbers for purposes
10 of the acquisition balance sheet, correct?
11 A. For, yes, for PMTG, it would be
12 their -- the desk would be marking those assets
13 that are listed on the Lehman opening balance
14 sheet, Barclays Capital Valuation Methodology
15 document.
16 Q. On the next bullet point in your cover
17 e-mail, you state, "Corporate marks represent
18 mid marks as supplied by corporate desk," and
19 then (traders are no longer with the firm)." Do
20 you see that?
21 A. They were all let go. All the
22 Barclays traders were let go post Lehman
23 acquisition and they, specifically, in the
24 Corporate Investment Grade and High-Yield Desks,
25 we -- the firm took on the high-yield traders

1 Teague
2 and --
3 Q. From Lehman?
4 A. -- and investment grade traders from
5 Lehman. So the individuals responsible for
6 marking those positions were no longer with the
7 firm or were no longer responsible for marking
8 the books.
9 Q. But you had, as part of the
10 acquisition, taken over the traders, the
11 high-yield traders from Lehman, correct?
12 A. Correct.
13 Q. Why were they not a resource to ask
14 questions of with respect to the marking of the
15 corporate bonds?
16 A. I think the biggest thing for the firm
17 as far as time well spent was to ensure that
18 individuals were properly hedging any of the
19 risk that the firm already had on its books and
20 records, so the breakdown was mostly we were
21 working -- you know, we weren't working alone,
22 we reached out to other people to get additional
23 information where necessary, but the reliance
24 was not on the desk to perform the valuations
25 because the desk was busy hedging the books and

1 Teague
2 records that they have already acquired.
3 So day one is day one. They were
4 making sure day two, day three, day four, the
5 firm weren't losing a lot of money and the
6 positions already on our balance sheet be it
7 through the Lehman acquisition or positions we
8 already had. From the Lehman's traders'
9 perspective, they were all given brand-new
10 books, if you look at it that way, so they had
11 to determine how to value their own books and
12 how to hedge their own positions.
13 Q. I'm trying to understand then your
14 next observation on that same bullet point. "No
15 asset level marks received to substantiate PMTG
16 Corp. MV." Do you see that?
17 A. So at that moment we didn't have the,
18 I take it, in that much earlier question of what
19 positions we would have had on the books, we
20 wouldn't have had no asset level marks received
21 to substantiate the PMTG corporate market value.
22 We didn't have any levels from the desk for
23 those positions. So we had --
24 Q. So if you had no level from the desk
25 for those positions, what would you use?

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1 Teague
2 A. The trading desk essentially wouldn't
3 have had the positions in the PMTG portfolio, so
4 the corporate desk wouldn't be able to
5 substantiate. That's from what I -- what I see
6 reading this bullet point.
7 Q. And then in the spreadsheet, is there
8 a particular section of the spreadsheet that
9 that comment is directed to?
10 A. One moment. Can you do me one favor
11 and go to PMTG and PMTG Not Yet Settled?
12 Q. So I have pulled up the PMTG Not Yet
13 Booked tab in the native format of 807.
14 A. Thank you. Can you scroll down? If
15 you could do the same for the PMTG tab.
16 Q. The PMTG tab. Scroll down?
17 A. Can you shrink it a tad and then go
18 home? Can you hit "home" or just go back to
19 cell A-1? Can you page down? Keep going,
20 please. Keep going. Thank you.
21 I don't recall. I was looking to see
22 if there was corporates in the PMTG tab, but I
23 don't see any.
24 Q. And using your handy reference before,
25 I'm going to the hot pink Corporates tab and see

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1 Teague
2 2008, and Mr. MacGoey from PwC is asking for
3 documentation concerning the opening balance
4 sheet, do you see that?
5 A. Yes.
6 Q. And you respond to that e-mail on page
7 966, where you provide him with a breakdown and
8 I assume with other data, the spreadsheet,
9 correct?
10 A. Yes.
11 Q. Is it safe to say that October 17 --
12 your e-mail is actually dated October 22. Was
13 that the first set of documents that you had
14 provided PwC in connection with the valuation?
15 A. I don't recall.
16 Q. And the document that was provided,
17 the spreadsheet that you have provided Mr.
18 MacGoey, do you recognize that document?
19 It's printed out behind the e-mails.
20 A. Yes, it looks similar to the other
21 documents that -- the document style that was
22 being used at the time, yes.
23 Q. Then you'll see in the rest of the
24 e-mail chain as you work your way to the front
25 of the document, Mr. MacGoey asks for backup,

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1 Teague
2 if that has the information you're looking for.
3 A. Apologies. I'm not quite sure --
4 Q. You don't know what that comment in
5 your e-mail refers to, what particular section
6 of the spreadsheet?
7 A. Apologies. It's been some time and it
8 doesn't stand out at the moment to have any
9 meaning.
10 Q. Okay. Sir, I've handed you what has
11 been marked as Deposition Exhibit 800B. If you
12 could take a moment to review it. Cover e-mail
13 with an attached spreadsheet. Let me know when
14 you're done.
15 (Document review.)
16 A. Yes. Any particular page?
17 Q. Let's start with the e-mail chain.
18 Let's start with the oldest e-mail and work
19 forward. The oldest e-mail is on the page that
20 ends 967.
21 A. Okay.
22 Q. And it's an e-mail from Robert MacGoey
23 to Marcus Morton, you see that?
24 A. Yes.
25 Q. And it's an e-mail dated October 17,

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1 Teague
2 correct? Sources of the prices use by PCG,
3 correct?
4 A. Yes.
5 Q. And you, in turn, send that request
6 along to other folks within the Independent --
7 within the IPD group to pull that data and
8 provide it to you to be provided to PwC,
9 correct?
10 A. Yes.
11 Q. In the data that you provided PwC,
12 both in this e-mail and through the -- through
13 your -- through this process of finalizing the
14 acquisition balance sheet, did you provide PwC
15 with access to any models that you had prepared
16 for valuing securities?
17 A. Rich Landreman may have walked them
18 through models. That would be outside of my
19 scope.
20 Q. As far as you're concerned for any of
21 the securities that you valued, you did not --
22 you did not use any models to value the
23 securities?
24 A. I would have -- it would have been
25 actually a member of Rich's team. The only

51 (Pages 198 to 201)

1 Teague
2 thing I helped in some of the coordination were
3 for the CDOs, but those values again would have
4 been something within Rich Landreman's team.
5 Q. And who within Rich Landreman's team?
6 A. It would be potentially Imran Ansari,
7 but Rich would have been overseeing a lot of
8 that analysis, and that would have been nothing
9 regarding models, just inputs to cash flow
10 analysis is what PwC would have asked for.
11 Q. Okay. And you would have provided
12 those inputs to PwC?
13 A. Yes.
14 Q. Do you know one way or the other
15 whether such inputs were requested and were
16 provided PwC?
17 A. Yes, data was provided to PwC. Be it
18 from myself or Rich, I don't recollect, but data
19 was provided to PwC as backup to support the
20 spreads, the research data, which was used to
21 calculate the prices, taking into account
22 discount margin, prepayment, severity, all of
23 the data was provided.
24 Q. And in terms of any of the specific
25 models that were used by Rich Landreman's team,

1 Teague
2 Q. Did you, for example, for the work
3 that you did with PwC, keep a record of the
4 information that you had provided PwC?
5 A. I would have whatever data I provided
6 them.
7 Q. Any reason to believe Mr. Landreman
8 wouldn't have similar data if he provided to it
9 PwC?
10 MR. HUME: Objection. Lacks
11 foundation.
12 A. I can't really talk on his behalf.
13 Q. I'm handing you what has been
14 previously marked as Exhibit 812B. Again, it's
15 a cover e-mail from you and an attached
16 spreadsheet. Take a moment to look at the
17 document and let me know when you're done.
18 A. Okay.
19 Q. In your cover e-mail, which is dated
20 Friday, November 14, to Kevin Jhea, Elly Pu and
21 others, titled "Haircut" or subject "Haircut,"
22 do you see that?
23 A. Uh-huh.
24 Q. Yes?
25 A. Yes.

1 Teague
2 do you know what those models were? Were they
3 proprietary models? Off-the-shelf models?
4 A. Intex would have been the main model.
5 Intex is a vendor model, you know, any
6 investment bank can purchase, essentially.
7 Q. And that's a model that Barclays did
8 use for valuing certain of the Lehman assets?
9 A. For cash flow analysis, yes, Intex
10 would have been utilized.
11 Q. Any other model?
12 A. I can't speak for anything outside of
13 my team outside of that.
14 Q. And do you know if the inputs that
15 were used for the Intex model have been provided
16 to the movants in this case?
17 A. Outside of my scope. I wouldn't know.
18 Q. You don't know one way or the other?
19 A. No.
20 Q. If you had to locate the inputs that
21 were provided to PwC, is that something that you
22 could do readily?
23 A. Again, Rich Landreman would be best to
24 talk to on that. That would be outside of my
25 scope.

1 Teague
2 Q. And you are asking them to provide
3 data to support the bid/offer assumptions on the
4 Liquidity tab for agencies. Do you see that?
5 A. Yes, for all of the tabs that they
6 provided the independent analysis of agencies
7 was Kevin, corporates was Kevin Jhea, Elly did
8 munis, and Heidi Su handled the emerging
9 markets.
10 Q. I'm sorry, I misread that. You're
11 absolutely right. So you're asking for data to
12 support bid/offer assumptions for agencies,
13 corporates, munis, and emerging markets?
14 A. Yes.
15 Q. And is that because PwC has made that
16 request of you to get that backup data?
17 A. I don't recall.
18 Q. Now, further down in your e-mail you
19 state, "Suggestions: Base it off real market
20 data if available." Do you see that? What did
21 you mean by that?
22 A. The initial analysis we knew that
23 there would be -- there was very limited broker
24 quotes or true market information as far as
25 market activities involving -- for instance, for

1 Teague
2 emerging markets, we did have runs which we were
3 able to see through Bloomberg where brokers were
4 sending out runs for that data and that data was
5 then used as part of the analysis for EM on how
6 the bid/offer would be viewed.

7 We didn't really have such data for
8 other asset classes. So for other asset classes
9 when the data was not ready available, we relied
10 more on vendor data versus broker data or, you
11 know, other dealer runs.

12 Q. I guess what I'm trying to understand
13 from the cover e-mail is, did you have bid/offer
14 assumptions in the Liquidity tab already in
15 place by November 14 and you were looking for a
16 backup for those assumptions, or were you
17 looking to come up with a bid/offer assumptions
18 to be included in the Liquidity tab?

19 A. I think it was we had -- sorry, could
20 you restate the question?

21 Q. I'm trying to understand what your
22 suggestion is directed to. Maybe if we can pull
23 up the native version of this document.

24 As of this point in time, November 14,
25 2008, did you already have assumptions in your

1 Teague

2 Liquidity tab and what you were suggesting is
3 ways to back up those assumptions, or are you
4 suggesting ways to come up with assumptions to
5 be included in the Liquidity tab?

6 A. I don't believe, and we can look at
7 the file, I don't believe --

8 Q. We just pulled up the Liquidity tab of
9 the attached spreadsheet.

10 A. And this is as of what date?

11 Q. Well, this is from the file that
12 you're looking at, so this is --

13 A. This is November 14.

14 Q. A native version of 812B and that is
15 as of November 14, 2008. And the Liquidity tab
16 has entries for the Liquidity Percentage column?

17 A. Okay.

18 Q. Do you see that?

19 A. Yes.

20 Q. And turning your attention back to the
21 suggestions that you're making to the team, are
22 you asking for backup for those percentages, or
23 are you asking them to go do work to add
24 additional bid/offer assumptions on the
25 liquidity table?

1 Teague

2 A. This analysis had been performed at
3 that time. I think we're just looking for -- I
4 think we're just looking for something to refine
5 the process of what was in place.

6 Q. Okay. So I understand, then, that you
7 already had your bid/offer assumptions; you were
8 going back and looking for support for those
9 assumptions?

10 A. I believe some of the assumptions
11 changed based on further analysis, but yes.

12 Q. Do you know that, or are you just
13 guessing that the assumptions changed based on
14 further analysis?

15 A. It was -- it was part of the overall
16 process. We just, you know, to substantiate the
17 initial bid/offer that was summarized on this
18 page was to ensure that, you know, the dataset,
19 you know, we had the dataset to support this
20 file. So that was really what the request was
21 for. And if there was any issues on how the
22 initial dataset was derived, it should, you
23 know, they should follow it following logical
24 hierarchy to ensure that they have proper
25 dataset.

1 Teague

2 Q. Well, that's what I'm trying to
3 understand is the process question. If you had
4 a dataset here where you had bid/offer
5 assumptions, you had based those assumptions on
6 data, correct?

7 A. Yes, there was -- there was some data
8 out there already. For instance, I know on
9 corporates we had some data and it was -- it was
10 essentially already in place. I can't speak for
11 the other asset types, but ...

12 Q. Well, was your direction to the team
13 or your suggestion to the team to go back and
14 try and find real market data to support the
15 assumptions that you had already made?

16 A. No, it was really more the -- the
17 dataset, there was already -- there was already
18 assumptions being made. They weren't just made.
19 They were made out of, you know, be it consensus
20 data or market data, but this was a means to get
21 people to actually put some -- pull all their
22 ideas together.

23 At this moment when they gave me their
24 names, a lot of the numbers I had received from
25 people was more just a haircut number. I didn't

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1 Teague
2 have any supporting documentation for where the
3 individuals had done any analysis. So this was
4 a means to ask everybody to come up with
5 something that supports what they were providing
6 me.
7 In general, keep in mind people within
8 the team have a view of the market because they
9 perform independent analysis, but having a view
10 did not mean they have supporting documentation
11 to provide me. So any documentation that they
12 may have used was thin, so I needed actual
13 supportable documentation.
14 Q. Okay. So you asked them to go back
15 and substantiate their view of their respective
16 markets by getting supporting documentation, is
17 that --
18 MR. HUME: Objection.
19 Q. Is that what you're doing with the
20 suggestion that you're making to them?
21 MR. HUME: Objection.
22 Mischaracterizes the testimony.
23 A. Can you ask the question again?
24 (Record read.)
25 A. I'm asking them to support the

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1 Teague
2 wasn't readily available.
3 Q. Having done that, having decided to do
4 this on an asset class or product class basis,
5 did you then go and see how the application of
6 that type of an asset-wide approach affected the
7 valuation of the particular CUSIPs?
8 A. On CUSIP level you may see swings,
9 wherein at one CUSIP it would overvalue and
10 another CUSIP it would undervalue that
11 bid/offer. But again, this was performed on an
12 asset level, so by going down to the CUSIP level
13 may only confuse the conversation further at
14 times because you could cherry-pick one and not
15 look at the other side of the picture.
16 Q. Just so I understand your answer,
17 then, if we are looking at particular CUSIPs
18 then, your view is that your liquidity
19 adjustment may over-correct or under-correct the
20 value of any particular CUSIP, because your view
21 is, taken together as an asset class, those
22 differences even out?
23 A. They should even out. There should
24 not be any significant issues because it's done
25 on the asset class level and these are quite

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1 Teague
2 bid/offer assumptions that were being utilized.
3 The bid/offer assumptions would have been
4 directed from the individuals within the team.
5 Q. Once you had these bid/offer
6 assumptions and you had obtained supporting data
7 and information from the various team members,
8 do you recall being part of any process where
9 those assumptions were tested against particular
10 CUSIPs to which they were being applied to see
11 if it made sense?
12 A. The analysis for the bid/offer was
13 performed at the asset level utilizing
14 supporting documentation of, again, datasets
15 that was readily available, be it market data or
16 vendor pricing data, and that data was used to
17 derive what the bid would be, looking at it from
18 an asset type because there was a limited amount
19 of data to do a full-on analysis any lower than
20 that.
21 So if we had readily available data,
22 it was a properly functioning marketplace. That
23 would be much easier to go down a road where
24 you're looking at readily available market data
25 but really in a market where that type of data

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1 Teague
2 large portfolios or quite large -- apologies --
3 it's a quite large population.
4 So in that sense it would be easy to,
5 again, cherry-pick a specific CUSIP in a large
6 number of CUSIPs and say, well, it doesn't work
7 for here without performing a full analysis that
8 has it performed everywhere.
9 Q. Did you do that type of analysis,
10 where you looked to see, okay, now that we have
11 picked an adjustment for an asset class or
12 product type, let's see what impact it actually
13 has on the particular CUSIPs that we have that
14 we are valuing?
15 A. By going the CUSIP level, again, I
16 don't think it may tell you the full set of
17 information. Why -- what may work at a higher
18 level may not work at the CUSIP level.
19 Q. I understand it may or may not work at
20 a CUSIP level, but did you do any analysis to
21 determine that it did not work at the CUSIP
22 level?
23 A. That analysis will reveal different
24 results based on your sample set, which is why
25 I'm stating it has to be more high level.

54 (Pages 210 to 213)

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<p>1 Teague</p> <p>2 So all of this became cleared up from</p> <p>3 my perspective or more so from the, you know,</p> <p>4 legal perspective of what, you know, what the</p> <p>5 firm could potentially be on the hook for after</p> <p>6 the event of default trigger.</p> <p>7 Basically, put the 367 million, I</p> <p>8 believe, in the -- would be accessible or would</p> <p>9 be pledged, I guess, to the super senior holder,</p> <p>10 meaning Barclays would have access to that money</p> <p>11 at a super senior holder; and it basically</p> <p>12 terminated, from my understanding, the</p> <p>13 requirement of the CDO to provide funding,</p> <p>14 revolving funding to any of the underlying</p> <p>15 assets within the portfolio.</p> <p>16 Q. What was the EOD trigger?</p> <p>17 A. The event of default trigger was</p> <p>18 sometime in October, where I think Lehman --</p> <p>19 Lehman missed a payment period. I'm not quite</p> <p>20 sure.</p> <p>21 Q. Was the bankruptcy of Lehman an EOD</p> <p>22 trigger?</p> <p>23 A. In and of itself, no, I don't believe</p> <p>24 it was.</p> <p>25 Q. Do you know that one way or the other?</p>	<p>1 Teague</p> <p>2 A. As the EOD didn't happen until</p> <p>3 October, I believe that would not have been the</p> <p>4 trigger because the EOD didn't happen until time</p> <p>5 in October.</p> <p>6 Q. So the EOD you're talking about</p> <p>7 happened in October, but you don't know one way</p> <p>8 or the other if the deal documents have an EOD</p> <p>9 trigger of the Lehman bankruptcy?</p> <p>10 A. If the deal documents had that, then I</p> <p>11 would imagine that in and of itself would have</p> <p>12 been the EOD trigger, not the October event.</p> <p>13 But again, yes, I do not know the specifics of</p> <p>14 that aspect to comment.</p> <p>15 Q. At the time the initial decision was</p> <p>16 made to have the Pine CLO valued at a value</p> <p>17 placed on it, which was roughly the 50s,</p> <p>18 correct?</p> <p>19 A. That's correct.</p> <p>20 Q. As of the acquisition date, that</p> <p>21 decision was made on the basis of your analysis</p> <p>22 of deal documents? Did you study the deal</p> <p>23 documents to do that?</p> <p>24 A. There was three different -- the front</p> <p>25 office spent more time working on the deal</p>
Page 220	Page 221
<p>1 Teague</p> <p>2 document aspect. That was Jasen Yang.</p> <p>3 My analysis was performed mostly based</p> <p>4 on the underlying assets themselves and</p> <p>5 reviewing if there was any potential</p> <p>6 repercussions if the deal does not continue to</p> <p>7 perform as expected. The part of my analysis,</p> <p>8 which is, you know, where I could see that there</p> <p>9 must be some, you know, legal risk out there,</p> <p>10 was post -- post Lehman's default. You know,</p> <p>11 the Pine went from highly rated to double C.</p> <p>12 So at that point in time, you know,</p> <p>13 Standard & Poors was of the view that, due to</p> <p>14 the bankruptcy, there's definitely a lot of</p> <p>15 unknowns in this deal which would result again</p> <p>16 in a, you know, in a pricing haircut to a deal</p> <p>17 where you priced the underlying, all the</p> <p>18 underlying that's outstanding is (A) lumpy and</p> <p>19 (B) the prices are usually coming from a</p> <p>20 consensus pricing service. The only pricing</p> <p>21 provider for said consensus pricing service is</p> <p>22 possibly Lehman.</p> <p>23 So you're relying on Lehman to tell</p> <p>24 you the price of the underlying and you're</p> <p>25 relying on S&P to tell you now that this is</p>	<p>1 Teague</p> <p>2 double C, there's also a huge legal aspects on</p> <p>3 top of the pricing aspects you're already</p> <p>4 worried about.</p> <p>5 Q. All of these questions and</p> <p>6 uncertainties you had about Pine, those all --</p> <p>7 you got more information about that as time went</p> <p>8 on, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And by the time you reported the final</p> <p>11 acquisition balance sheet in February 2009, the</p> <p>12 value of Pine had already been written up on the</p> <p>13 books of Barclays, correct?</p> <p>14 A. Yes, that's the case.</p> <p>15 Q. Had written up to what value?</p> <p>16 A. I can't say for --</p> <p>17 Q. Was it written back up to par?</p> <p>18 A. No.</p> <p>19 Q. What was it written back up to?</p> <p>20 A. It was I believe in the 70s by end of</p> <p>21 the year.</p> <p>22 Q. Was there any discussion within the</p> <p>23 IPV as to whether, given all you knew about the</p> <p>24 Pine CLO, whether it was still appropriate to</p> <p>25 list for acquisition date purposes a value that</p>

<p style="text-align: right;">Page 226</p> <p>1 Teague</p> <p>2 the analysis and thought process you went</p> <p>3 through in deciding what value to ascribe to</p> <p>4 Pine as of the acquisition date; is that</p> <p>5 correct?</p> <p>6 A. That is correct. That is part of the</p> <p>7 analysis we did.</p> <p>8 Q. And who did that analysis? Was that</p> <p>9 you? Was that someone else?</p> <p>10 A. For Pine there was three different</p> <p>11 analyses performed. There was one within IVC.</p> <p>12 Jasen Yang performed the analysis from the front</p> <p>13 office perspective, which I believe you already</p> <p>14 would have. And there was an analysis performed</p> <p>15 by DPWC in reference to the analysis that was</p> <p>16 performed by IVC as well as the analysis</p> <p>17 performed by Jasen Yang.</p> <p>18 Q. When you say the analysis performed by</p> <p>19 PwC?</p> <p>20 A. They just did an overall -- I wouldn't</p> <p>21 saw cursory -- an overall review of the pricing</p> <p>22 that was independent pricing as well as the</p> <p>23 front office pricing and opined that it seemed</p> <p>24 to be reasonable.</p> <p>25 Q. They basically looked to see what work</p>	<p style="text-align: right;">Page 227</p> <p>1 Teague</p> <p>2 you had done and what work Jasen Yang had done?</p> <p>3 A. Yes.</p> <p>4 Q. They didn't do an independent</p> <p>5 analysis, correct?</p> <p>6 A. Yeah, I couldn't say. It was more a</p> <p>7 review to state that if the analysis was</p> <p>8 appropriate.</p> <p>9 Q. Did you also discuss with PwC the fact</p> <p>10 that you got later written up the value of Pine,</p> <p>11 of the Pine CLO on Barclays' books?</p> <p>12 A. Any subsequent write-ups, PwC would</p> <p>13 have been privy to that as far as the opening</p> <p>14 balance sheet and they would have, you know, I'm</p> <p>15 sure there was a couple e-mails and follow-up</p> <p>16 conversations to better understand the trigger</p> <p>17 event. And I believe that was in their final</p> <p>18 review of the Pine assets.</p> <p>19 Q. Was there any Day 1 P&L recorded by</p> <p>20 Barclays in connection with any of the assets</p> <p>21 acquired from Lehman?</p> <p>22 MR. HUME: Objection. Vague and</p> <p>23 ambiguous.</p> <p>24 A. That is more of a Product Control</p> <p>25 question. I couldn't speak to that.</p>
<p style="text-align: right;">Page 228</p> <p>1 Teague</p> <p>2 Q. One of the documents that's been</p> <p>3 produced in this case is a Barclays Capital</p> <p>4 Provisioning Policy Statement. Are you familiar</p> <p>5 with that?</p> <p>6 A. Yes.</p> <p>7 Q. And there's a reference in that</p> <p>8 statement to "Day 1 P&L." Are you familiar with</p> <p>9 that?</p> <p>10 A. Yes, I am. Usually applied for</p> <p>11 derivatives, trading derivatives.</p> <p>12 Q. Are you aware of it applying to</p> <p>13 trading instruments other than derivatives?</p> <p>14 A. It can apply to other instruments.</p> <p>15 Q. I misspoke. The policy is called</p> <p>16 Marking Illiquid & Unobservable Prices. That's</p> <p>17 the title of the policy. I'll show you a copy</p> <p>18 of it and we can talk about it.</p> <p>19 (Deposition Exhibit 871, a document</p> <p>20 bearing Bates Nos. BCI-EX-(S)-00180042</p> <p>21 through 80063, marked for identification, as</p> <p>22 of this date.)</p> <p>23 Q. I have placed before you a document</p> <p>24 marked Exhibit 871. It's titled Marking</p> <p>25 Illiquid & Unobservable Prices (Day 1 P&L</p>	<p style="text-align: right;">Page 229</p> <p>1 Teague</p> <p>2 Recognition)." The date on the front page is</p> <p>3 July 2007. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And generally, are you familiar with</p> <p>6 this document?</p> <p>7 A. Yes.</p> <p>8 Q. And was this a document that featured</p> <p>9 in any way in the independent valuation work</p> <p>10 that you did in connection with the Lehman</p> <p>11 acquisition?</p> <p>12 MR. HUME: Object to the form of the</p> <p>13 question.</p> <p>14 A. I'm sorry, can you ask the question</p> <p>15 again? I'm just trying to review it.</p> <p>16 Q. Why don't you finish reviewing it and</p> <p>17 I'll ask the question again. Let me know when</p> <p>18 you're done.</p> <p>19 (Document review.)</p> <p>20 A. Sorry, what was the question again?</p> <p>21 (Record read.)</p> <p>22 A. Not that I'm aware of. Not for the</p> <p>23 work that I overlooked.</p> <p>24 Q. I guess the next question was, are you</p> <p>25 aware of whether this policy and procedure was</p>

1 Teague
2 used by any of the other folks doing independent
3 price valuations?
4 A. I cannot speak on their behalf.
5 Q. And just so I can get some clarity on
6 it, is the reason that this was not something
7 relevant to your work is because there was no
8 Day 1 P&L that resulted from the valuation that
9 you did, or was it for some other reason?
10 A. There is no Day 1 P&L that I'm aware
11 of for the Lehman opening day balance sheet.
12 Q. If there had been Day 1 P&L for the
13 Lehman opening day balance sheet, would this
14 policy and procedure have been applicable?
15 A. I can't speak to that.
16 MR. HUME: Objection. Lacks
17 foundation.
18 A. I can't speak to that.
19 Q. Do you know under what circumstances
20 this policy and procedure would have been
21 applicable?
22 A. This policy and procedure is
23 applicable when we do a new trade. Again, the
24 majority of it is derivatives, and there are a
25 lot of -- where there's unobservable data for

1 Teague
2 been marked Exhibit 873. It's a two-page
3 document. If you could take a moment to review
4 it. Let me know when you're done.
5 (Document review.)
6 A. Oh, okay. Okay.
7 Q. Drawing your attention to the oldest
8 e-mail in the chain, do you recognize that as an
9 e-mail from Marcus Morton to you on or about
10 December 19, 2008?
11 A. Okay. I didn't look at the other
12 page. Apologies. One moment.
13 (Document review.)
14 A. Okay.
15 Q. Do you have my question in mind?
16 (Record read.)
17 A. Yes.
18 Q. And was this the earliest point in
19 time that someone from Barclays was suggesting
20 valuing the portfolio assets the 22nd as opposed
21 to the 19th, sir?
22 MR. HUME: Objection. Lacks
23 foundation.
24 A. I can't recall. I believe in some of
25 the older documentation the 22nd was part of the

1 Teague
2 the purposes of inputs to the deal, so input
3 pricing parameters, reflect input pricing
4 parameters for the Lehman opening balance sheet.
5 Q. I missed the end of your answer.
6 A. We can show input pricing parameters
7 for the Lehman opening balance sheet.
8 Q. Okay. So you offered that as a reason
9 why this policy would not be applicable to the
10 Lehman opening day balance sheet?
11 A. For the assets I reviewed, this would
12 not be applicable.
13 Q. For the assets you reviewed.
14 (Recess; Time Noted: 4:40 P.M.)
15 (Time Noted: 5:04 P.M.)
16 (Deposition Exhibit 872, a document
17 bearing Bates Nos. BCI-EX-(S)-00176591
18 through 591, with attachment, marked for
19 identification, as of this date.)
20 (Deposition Exhibit 873, a document
21 bearing Bates Nos. PwC-BarCap00008679
22 through 80, marked for identification, as of
23 this date.)
24 BY MR. TAMBE:
25 Q. Sir, I'm handing you a document that's

1 Teague
2 discussion, but I can't recall.
3 Q. It had been part of the discussions,
4 but then you had prepared valuations and you
5 were preparing spreadsheets that we had looked
6 at before which had 9/19 values on them,
7 correct?
8 A. Yes.
9 Q. Do you have an explanation as to why
10 Mr. Morton, in or about December 2008, was
11 asking and raising the question about doing the
12 valuation as of 9/22?
13 A. Appears there was more clarity on the
14 valuation date in question. There was
15 originally quite a bit of confusion. As of this
16 date, there was additional clarity, which I take
17 it was why I replied to Robert MacGoey to ask
18 additional questions to, again, gain further
19 clarity.
20 Q. Do you know what it was that happened
21 in December that gave additional clarity on the
22 acquisition date?
23 A. That I can't speak to.
24 Q. Did you ask Mr. Morton that?
25 A. No, I believe it was -- I really can't

1 Teague
2 speak to specifics. It was just that was the --
3 the 9/22 was the final date. So, from my
4 perspective, it seemed logical that 9/22 was the
5 date for which to value the assets, but I'm not
6 the best person to speak to on this question
7 because I wasn't really involved in the thought
8 process of why 9/22 versus 9/19.
9 Q. Who would be the best person to speak
10 to on this?
11 A. I guess being based on this e-mail
12 would be possibly Marcus Morton or Robert
13 MacGoey could provide better clarity.
14 Q. Was the decision to pick 9/22 as
15 opposed to 9/19 valuations, was that made at the
16 Patrick Clackson level or higher levels of the
17 bank? Where was that decision made?
18 MR. HUME: Objection. Lacks
19 foundation.
20 A. I don't have the ability to speak to
21 that. Again, I would say, from my perspective,
22 it was just more, you know, the information that
23 was brought to my attention. It was not
24 something I was involved in the discussions.
25 Q. And that's not something you asked Mr.

1 Teague
2 really provides that type of data from the
3 vendors. So the thought process is you could
4 use the end of day data to reflect 9/22.
5 Q. In responding to Marcus Morton, did
6 you try to collect any data over the weekend or
7 any preopening data from the morning of the
8 22nd?
9 A. In all honesty, there's no such data
10 available from the vendors. No data -- no
11 vendor runs a morning opening price. That's not
12 something that you can readily get from the
13 vendors. They run the end of day price.
14 Q. So that's not something you tried to
15 obtain; is that right?
16 A. It's not something that could be
17 obtained. It's not a question of tried to
18 obtain. One is unable to obtain opening vendor
19 level.
20 Q. Turning to the first page of the
21 exhibit, which is Robert MacGoey's e-mail to
22 you, did you have any discussions with Robert
23 MacGoey in response to this e-mail? Did you
24 call him up, talk to him about any of the points
25 that he had raised in this e-mail?

1 Teague
2 Morton, where this direction comes from?
3 A. Again, based on the e-mail, the
4 follow-up e-mail, it's more me reaching out to
5 Robert MacGoey to get more clarity. That was my
6 attempt to gain more clarity.
7 Q. So are you telling me that, other than
8 sending on this e-mail to Robert MacGoey, you
9 did not respond to Mr. Morton by asking him why
10 the change, what's the rationale behind the 9/22
11 move?
12 A. Again, I believe the rationale had
13 more to do with, if it was as of September 22,
14 looking at the earlier e-mails, then the best
15 reflection of the valuation would be as of
16 September 22 because the acquisition was as of
17 the morning, I believe, of the 22nd.
18 Q. Prior to the open of the 22nd.
19 A. Yes, and there's really no way to
20 easily -- the Friday value would not be
21 reflective of any additional market movements
22 that could have happened over the weekend, be
23 it, you know, Asia is open and Europe is open
24 before the U.S. is open. So any snapshot you
25 would try to take as of Monday morning, no one

1 Teague
2 A. One moment.
3 (Document review.)
4 A. I think any discussions to the effect
5 was more so a review of the, as stated here, the
6 bid/offer analysis that we had performed. At
7 this point in time, we had used the, for
8 instance, for the corporates, there was a, I
9 believe a standard deviation of pricing vendors
10 that was reviewed in light of the commentary of
11 PwC.
12 Q. And after you reviewed it in light of
13 commentary from PwC, what did you do?
14 A. We reviewed in place of a standard
15 deviation of movings to capture the bid price to
16 utilize the lowest price available from the
17 vendors, as the market was again falling between
18 the original date and the 9/22 date.
19 Q. Just so I understand your answer, in
20 response to this commentary from PwC, you moved
21 from taking the lowest price to -- you moved to
22 taking the lowest price from using the standard
23 deviation approach?
24 A. That is correct.
25 MR. TAMBE: Thank you. I have no

1 Teague
2 like it was something that was going on between
3 Operations, the head of Operations and Marcus,
4 and I was just trying to get clarity as to what
5 the -- what the date was and he was saying,
6 "Please see the below e-mail." So I was just, I
7 guess, getting into the process rather late to
8 provide some clarity, if I could get any
9 clarity, from PwC.

10 Q. And do you recall getting any clarity
11 from PwC, sir?

12 A. I do not. Much of the involvement I
13 performed on the equities was because Mark
14 Washtell is located in London, so I was just
15 working to help coordinate some of these
16 aspects.

17 MR. OXFORD: I don't have any further
18 questions for you, Mr. Teague. Thank you.

19 MR. HUME: You have no questions?

20 MR. KAY: No questions.

21 MR. HUME: I have a few questions for
22 the witness and then we can finish up.

23 EXAMINATION BY

24 MR. HUME:

25 Q. Mr. Teague, as you know, I'm Hamish

1 Teague
2 Hume, representing Barclays.

3 You understand your testimony in this
4 deposition is part of a court proceeding and may
5 potentially be considered by the Court in this
6 case?

7 A. Yes.

8 Q. And you've been asked a lot of
9 questions about the valuation of certain assets
10 that Barclays acquired from Lehman pursuant to
11 the September 2008 sale transaction, correct?

12 A. Yes.

13 Q. Can you just state again for the
14 record which of those assets you and your
15 specific group in Independent Valuation Control
16 were responsible for valuing?

17 A. That would be the fixed income rates
18 and corporate assets.

19 Q. And did the valuations that you and
20 the members of your group arrived at for those
21 assets flow up into Barclays' acquisition
22 balance sheet that was publicly reported in
23 early 2009?

24 A. Yes, that was the case.

25 Q. And in all of the work that you did to

1 Teague
2 determine values to ascribe to those assets,
3 what was the goal of your valuation efforts?

4 MR. TAMBE: Objection to the form of
5 the question.

6 A. The goal was to ensure that we were
7 appropriately marking the assets to a bid price
8 and the market as of 9/22.

9 Q. And when you say "at bid price," was
10 that -- what relationship does that have to a
11 fair market value for those assets?

12 A. We were looking to use a fair market
13 value at which these assets could be -- could be
14 valued in light of the market conditions. We
15 were trying to derive or obtain the proper
16 market values as of 9/22 for the assets in the
17 Lehman portfolio.

18 Q. And was the direction that you were
19 given, to the extent you were given any
20 direction by anyone internally at Barclays,
21 consistent with the overall goal of determining
22 an accurate fair market value for the assets you
23 were responsible for valuing?

24 A. Yes.

25 Q. And looking back at all of your

1 Teague
2 efforts in the course of this deposition and
3 preparing for it, do you believe that at all
4 times during your work you attempted to fairly
5 and reasonably determine the fair market value
6 for all of those assets?

7 A. Yes, I believe that is the case.

8 Q. Do you have any recollection of anyone
9 at Barclays at any time suggesting to you that
10 you should do anything other than attempt to
11 calculate and determine the appropriate fair
12 market value of the assets you were responsible
13 for valuing?

14 A. No, I do not.

15 Q. Did anyone ever say to you, in form or
16 substance, that a result other than fair market
17 value at an appropriate bid price was the
18 desired goal or should be what you aim to
19 achieve?

20 A. No.

21 Q. Did anyone ever indicate to you or
22 anyone else working for you, to your knowledge,
23 that you should attempt to understate the fair
24 market value of the assets that had been
25 acquired, to state values that were below that

1 Teague
2 fair market value?
3 A. No.
4 Q. And do you believe the valuations you
5 ultimately reached for the assets you and your
6 team were responsible for valuing reflect the
7 fair market value as of September 22, 2008?
8 A. Yes, I do.
9 Q. And you have been asked some questions
10 about PwC during this deposition. Did you
11 interact with PwC professionals during your work
12 in valuing the assets that had been acquired by
13 Barclays?
14 A. Yes.
15 Q. Were they involved before the
16 acquisition balance sheet was finalized?
17 A. Yes.
18 Q. And did PwC look closely at the
19 different methodologies that were used to value
20 the different types of assets that you were
21 responsible for valuing?
22 MR. TAMBE: Objection to the form of
23 the question.
24 A. Yes, PwC did an analysis of the
25 independent valuations and reviewed different

1 Teague
2 involved in the transaction, do you recall that?
3 A. Yes.
4 Q. You were asked some questions about
5 specifically Lehman's marks on some of those
6 assets, do you recall that?
7 A. Yes.
8 Q. Let me ask you, in the work that you
9 did that week, do you have any recollection of
10 ever at any time relying on any of the Lehman
11 marks on any of the securities that you looked
12 at?
13 A. No, I don't even believe I had the
14 Lehman marks available to me.
15 Q. Were you ever asked by anyone to
16 assess the accuracy or potential staleness of
17 those Lehman marks?
18 A. No.
19 Q. And are you sure one way or the other
20 whether you even saw the Lehman marks on those
21 securities?
22 A. I do not believe I have seen the marks
23 on those securities.
24 Q. Would it surprise you if someone told
25 you that the Lehman marks on some of the

1 Teague
2 methodologies that were utilized in their
3 oversight of the Lehman opening balance sheet.
4 Q. And was PwC, to your knowledge, aware
5 of the valuation date that Barclays was using to
6 arrive at these fair market values?
7 A. Yes.
8 Q. And to your knowledge, did PwC agree
9 that that valuation date was a reasonable
10 valuation date?
11 A. Yes.
12 Q. And to your knowledge and
13 understanding, did PwC ultimately conclude that
14 Barclays' valuations of the securities acquired
15 in the Lehman sale transaction were fairly
16 stated in all material respects?
17 A. Yes.
18 Q. You were asked some questions earlier
19 in the deposition about work that you may have
20 done during the week of September 15, 2008, do
21 you recall that?
22 A. Yes.
23 Q. You were asked some questions about
24 reconciliation efforts you may have done that
25 week on some of the assets that might have been

1 Teague
2 securities acquired by Barclays were stale by
3 the week of September 15, 2008 after Lehman
4 Holding Company filed bankruptcy?
5 MR. TAMBE: Object to the form. Lack
6 of foundation.
7 MR. KAY: Same objection.
8 MR. TAMBE: Objection. Calls for
9 speculation.
10 A. Based on conversations after the
11 acquisition, I would not be surprised if marks
12 were not being updated from the Lehman side.
13 Q. You also were asked some questions
14 about which assets were going to be included in
15 the transaction and whether assets from one of
16 the exhibits you were shown were the assets that
17 were to be transferred to Barclays, do you
18 recall that?
19 A. Yes.
20 Q. Did you have any involvement at all in
21 the negotiations over the terms of the sale
22 transaction?
23 A. No, I did not.
24 Q. Were you closely involved in any
25 indirect way with the negotiations in the sale

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<p>1 Teague 2 transaction? 3 A. No, I was not. 4 Q. Do you think you would have a clear 5 and good understanding at any given point in 6 time during the week of September 15, 2008 of 7 the specific assets that were supposed to be 8 included in the sale transaction? 9 MR. OXFORD: Object to the form. 10 Q. Would you know what was being 11 negotiated in terms of which securities were 12 going to be included or not? 13 A. From a negotiation perspective, no, I 14 would not know that. 15 Q. You testified earlier in the 16 deposition about the market free-fall that was 17 going on in September 2008, and you made a 18 reference at one point to September 22. 19 Do you have any specific recollection 20 of whether September 22 in particular was a date 21 of market free-fall, or were you testifying 22 generally about the time period around the 23 Lehman bankruptcy? 24 MR. TAMBE: Objection to form. 25 Objection to the extent it seeks to</p>	<p>1 Teague 2 recharacterize prior testimony or suggests 3 an answer to the witness. 4 Q. The testimony is what it is. I just 5 want to know what it is that you recall 6 specifically about September 22 as opposed to 7 generally around the time of the Lehman 8 bankruptcy. 9 A. Generally around the time, it was in 10 market free-fall. The number I was referring to 11 earlier was actually the Monday prior, where the 12 market had fallen dramatically that day. The 13 market on the 22nd, while volatile, was not 14 the -- was not the day that I was speaking to 15 when the market fell by 800. The market I 16 believe only fell about 3 or 400 that day. 17 Q. You were asked about whether or not 18 you ever attempted to determine the value of 19 assets or securities acquired by Barclays as of 20 the open of business on September 22 as opposed 21 to other times on September 22. Do you recall 22 that? 23 A. Yes. 24 Q. Can you explain why it is -- well, let 25 me ask this question first. In the typical</p>
Page 288	Page 289
<p>1 Teague 2 course of business, does Barclays ever have to 3 determine the value of its securities as of a 4 particular time of day? 5 A. We would have no ability to value 6 something as of a particular time of day. Only 7 if something maybe potentially on 8 exchange-traded. 9 Q. Does Barclays attempt to value 10 securities as of a particular date on a daily 11 basis? 12 A. On a -- the regular IVC process that's 13 performed on a month-end basis. Any pricing 14 that is performed on a daily basis, either by 15 the desk or using external data, has to be close 16 of business. That's the only place for the data 17 to be readily available. 18 Q. And when Barclays attempts to value 19 assets as of a particular date, whether it's the 20 front office or IVC, what is the data that is 21 available for market activity as of any 22 particular date? Is it the data from the 23 beginning of business or the end of business? 24 A. All data available from the vendors is 25 the data for the end of business.</p>	<p>1 Teague 2 Q. Is there any data that could have been 3 used to value securities as of the open of 4 business on September 22? 5 A. Not that I'm aware of. 6 Q. You were asked some questions in this 7 deposition about liquidity haircuts and whether 8 they were taken on a CUSIP-by-CUSIP basis or 9 portfolio basis. Do you recall that? 10 A. Yes, I do. 11 Q. Can you first explain what it is in 12 the context of your valuation work in this case 13 is meant by the phrase "liquidity haircut"? 14 A. "Liquidity haircut" was a reference to 15 a means to mark the vendor data, which is mid 16 price to a bid price to reflect fair value. 17 Q. When you talked about liquidity 18 haircuts on a portfolio basis, did that in any 19 way reflect any judgments about what would 20 happen if that entire portfolio was going to be 21 liquidated? 22 A. No, that number was not derived in 23 that light. 24 Q. Were the liquidity haircuts an effort 25 to determine the correct fair market value for</p>

1 Teague
2 the specific CUSIPs within the portfolio on a
3 CUSIP-by-CUSIP basis?

4 MR. TAMBE: Objection to the form of
5 the question.

6 Q. Let me rephrase the question. Were
7 the liquidity haircuts an effort to determine
8 the fair market value at which you could sell
9 each CUSIP as opposed to what you would get for
10 liquidating the entire portfolio?

11 MR. TAMBE: Objection to the form of
12 the question.

13 A. The liquidity haircut or bid/offer
14 which was performed at the product level was
15 done in a way to capture what it would -- what
16 pricing it would take essentially to sell the
17 underlying, but in no way to sell them all at
18 the same time. It was a haircut based on
19 utilizing data from other CUSIPs as a means to
20 determine what a high-level bid/offer would be
21 for those assets.

22 Q. You were asked a question about one
23 spreadsheet that showed a column for notional
24 value as opposed to market value. Do you recall
25 that?

1 Teague
2 the valuation work you performed in IVC?

3 A. No. Funding risk, from our
4 perspective, was more so an aspect of the
5 overall legal risk.

6 Q. You gave some testimony about an
7 analogy to SIVs. Was that an analogy based upon
8 funding risks or something else?

9 A. That was an analogy based on a legal
10 risk where an event of default, when triggered,
11 one is never certain of what the outcome will
12 be. In that scenario the firm had to take large
13 writedowns due to the judgment that occurred
14 based on EOD triggers, and that's where the
15 legal risk can result in large writedowns.

16 Q. In your work in IVC in valuing Pine,
17 did you make any specific judgment one way or
18 the other as to whether Barclays specifically
19 might have to contribute additional money into
20 Pine in the future based on borrower calls on
21 the underlying revolver and credits?

22 A. No.

23 Q. The movants have said in this case or
24 their expert has said that Barclays' valuation
25 of Pine was based on an incorrect reading of the

1 Teague

2 A. Yes, I do.

3 Q. Does notional value bear any necessary
4 relationship to fair market value when you're
5 talking about the types of securities that were
6 acquired in this transaction?

7 A. No, notional value would be the size
8 of a position based on the price. The notional
9 of -- a very large notional can end up having a
10 very small market value.

11 Q. You were asked some questions about
12 the Pine collateralized loan obligation. Do you
13 recall that?

14 A. Yes.

15 Q. And I believe you testified there were
16 different valuations performed by the front
17 office traders and by IVC; is that correct?

18 A. That is correct.

19 Q. You were asked some questions about
20 the funding risk and the relevance of funding
21 risk to the valuations performed by IVC -- well,
22 to the valuations performed by Barclays. Do you
23 recall those questions?

24 A. Yes.

25 Q. Did funding risk have any relevance to

1 Teague

2 underlying contract or indenture because the
3 contract says that Barclays, as the owner of the
4 Senior Tranche A participation interest, had no
5 obligation to contribute funding to Pine.

6 Do you believe that the Barclays
7 valuation of Pine was incorrectly based on an
8 assumption that Barclays might have a funding
9 risk contrary to the terms of that contract?

10 A. No, I do not.

11 Q. Do you recall that the front office in
12 its valuation of Pine did review a variety of
13 scenarios, at least one of which might have a
14 risk of future funding?

15 A. Yes.

16 Q. Did you understand that the funding
17 risk that the front office was concerned about
18 was, in the first instance, that the CLO itself,
19 the Pine entity as opposed to the tranche
20 holders like Barclays, would be called upon to
21 contribute the money it held as cash in eligible
22 investments to the borrowers?

23 MR. TAMBE: Objection to the form of
24 the question.

25 A. Yes, that was my understanding.

Teague

That --

Q. So could there be a funding risk relevant to valuing Pine that had nothing to do with Barclays having to contribute money?

A. Yes.

Q. Can you explain that?

A. If the money, that \$367 million, is used to provide future funding for the revolvers, that is money that would no longer be going to the senior tranche. In the event of default, if that were an event -- if an event of default were to occur, as it did, and the ending result was that money would be allocated to the super senior holder, then that's money that can be applied towards our valuation.

If we are unable to utilize that money and that money can then, instead of going to a super senior holder, could then go to provide funding to all the underlying revolvers, that would money we wouldn't have, in a sense money that would be removed from the valuation of the super senior.

Q. And as of the time you were trying to value Pine, as of September 22, Barclays would

Teague

not have known whether or not that money in the CLO would be dispersed to Barclays and the other tranche holders or, instead, be required to fund future borrowing calls by the borrowers, correct?

A. That's correct.

MR. TAMBE: Objection to form.

Q. Do you recall how much money that was that was held by the CLO?

A. That I do not. I believe somewhere in the neighborhood of \$200 million at the end of the year.

Q. Do you know whether, to this day, almost two years after Barclays acquired Pine, Barclays is yet to receive even one dollar in distribution payment to the tranche holder?

A. No, we have never received any money, to my knowledge.

Q. As far as you know, does Pine continue to hold eligible investments that it has refused to distribute to Barclays?

A. Yes.

Q. Is that consistent with some of the skepticism that was implicit in your valuation

Teague

of Pine on the acquisition balance sheet?

MR. TAMBE: Objection to form.

MR. KAY: Same objection.

A. Yes.

Q. In addition to the funding risk of Pine using its eligible investments to contribute to borrowers and fund borrower calls rather than distribute to tranche holders, was there also a funding risk that, irrespective of what the contract might require, the borrowers might need funding in order to keep their businesses operating?

A. Yes.

MR. TAMBE: Objection to form.

A. It would not be a contractual obligation, but it would be logical, as the owner of the noteholder, to ensure that you not hurt the underlying firms in a way that it would negatively affect the value of the CLO that you're holding.

Q. So even if the contract clearly stated that the senior tranche holder did not have an obligation under the contract to fund money, is it your view, given your familiarity with these

Teague

assets, that there might be a risk of needing to fund in order to keep the underlying borrowers healthy enough to repay -- to operate their businesses through the crisis and pay off the debts in the future?

A. Yes, and it's an unknown and that's why there was legal risk.

Q. In terms of the funding risk of the CLO itself, Pine, contributing its eligible investments to fund borrower calls rather than to pay out to tranche holders, is it your understanding that that risk was eliminated by the event of default in October 2008?

A. Yes, that's my understanding.

Q. And why was that information from October 2008 not used in valuing Pine as of September 22, 2008?

A. Until such time it was an unknown and there was a valuation perspective from the front office to run different scenarios to what the outcome would be, but there was no means of seeing into the future. The valuation was performed as of 9/22 based on the data available as of 9/22.

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1 Teague
2 Q. You were asked questions about the
3 extent to which Barclays used internal auctions
4 to value some of the assets acquired in the
5 Lehman transaction. Do you recall those
6 questions?
7 A. Yes.
8 Q. And you gave testimony about PMTG
9 illiquid assets sometimes being valued based
10 upon those internal auctions. Do you recall
11 that?
12 A. Yes.
13 Q. Do you know with any certainty the
14 volume of assets and the precise population of
15 assets for which internal auctions were used to
16 value the assets as valued on the acquisition
17 balance sheet?
18 A. I don't recollect.
19 Q. Would that information be available in
20 the spreadsheets that have been produced in this
21 case?
22 A. Yes, they would.
23 Q. You were asked in one of exhibits you
24 were shown by Mr. Oxford -- maybe we can just
25 look at Exhibit 873.

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1 Teague
2 well-developed.
3 Q. Can you explain the difference between
4 the nature of the vendor, third-party vendors
5 with pricing data for corporate debt and for
6 other asset classes such as agency rates or
7 other securities?
8 A. For the corporate debt, there are
9 quite a number of vendors that provide
10 independent values, indicative values on a daily
11 or monthly basis. This is due to the fact that,
12 as an asset class, there is quite a bit of noise
13 as far as pricing goes and it creates the
14 foundation for more vendors to be able to get
15 into that space, and historically that's why
16 there is more pricing vendors for corporate
17 bonds than for sometimes more liquid assets.
18 Q. As a general matter, was PwC familiar
19 with the methodologies used, ultimately used by
20 you and your group to adjust to bid prices, fair
21 market values and bid prices?
22 MR. TAMBE: Objection. Foundation.
23 A. Yes.
24 Q. And to your knowledge and
25 recollection, did they raise any material

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1 Teague
2 Do you have that in front of you?
3 A. Yes.
4 Q. This was a PwC e-mail from Mr. MacGoey
5 where he lists out a number of points, one of
6 which relates to the mid to bid adjustment, the
7 point that begins "as it relates." Do you see
8 that point?
9 A. Yes.
10 Q. It says, "As it relates to the
11 adjustments from mid to bid, we have not
12 received any documentation to support why the
13 standard deviation of the pricing vendors is
14 reasonable." And when you were shown that
15 earlier, you said, in response, you recalled
16 moving to a system where you would use the
17 lowest vendor price. Do you recall that?
18 A. Yes.
19 Q. Did you use the lowest vendor price
20 for every single category of assets that you
21 were involved with or only for those where there
22 were multiple vendor sources that were
23 well-developed?
24 A. Only for corporate bonds where we had
25 multiple vendor sources that were

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1 Teague
2 concerns with any of those methodologies that --
3 did they have any disagreement with your
4 methodologies that resulted in material
5 differences in valuations?
6 A. No, not that I can recollect.
7 MR. HUME: I have no more questions.
8 MR. TAMBE: Thank you. No questions.
9 MR. OXFORD: No more. Thank you, Mr.
10 Teague.
11 THE WITNESS: You're welcome.
12 (Time Noted: 6:34 P.M.)
13 oOo
14
15
16
17
18
19 SEAN TEAGUE
20
21 Subscribed and sworn to
22 before me this day
23 of 2010.
24
25

HIGHLY CONFIDENTIAL - PAOLO TONUCCI

1

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

In Re:

Chapter 11

LEHMAN BROTHERS Case No. 08-13555(JMP)
HOLDINGS, INC. et al., (Jointly Administered)

Debtors.

HIGHLY CONFIDENTIAL

DEPOSITION OF PAOLO TONUCCI

Friday 14 August 2009

At: 7:00 am

Taken at:

Jones Day

21 Tudor Street

London

United Kingdom

Reported by: AILSA WILLIAMS

Certified LiveNote Reporter

Page 6	Page 7
<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI</p> <p>2 Schiller & Flexner representing Barclays.</p> <p>3 MR. TAMBE: Erica, can you hear us?</p> <p>4 MS TAGGART: Yes, thank you.</p> <p>5 MR. TAMBE: Morning, Mr. Tonucci. By</p> <p>6 whom are you currently employed?</p> <p>7 A. Barclays.</p> <p>8 Q. In what capacity?</p> <p>9 A. I work in the treasury area.</p> <p>10 Q. What is your position?</p> <p>11 A. Head of group balance sheet.</p> <p>12 Q. And is that head of group balance sheet</p> <p>13 for global operations?</p> <p>14 A. That is right, for global operations.</p> <p>15 Q. How long have you held that position?</p> <p>16 A. Since February of this year.</p> <p>17 Q. How long have you been employed by</p> <p>18 Barclays?</p> <p>19 A. Since September, 26 September 2008.</p> <p>20 Q. What was your position at Barclays when</p> <p>21 you first joined Barclays in September 2008?</p> <p>22 A. US treasurer for Barclays Capital.</p> <p>23 Q. If you could describe for us briefly</p> <p>24 what your duties have been since you joined</p> <p>25 Barclays, both as US treasurer and now as global</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI</p> <p>2 treasurer?</p> <p>3 A. I am not the global treasurer.</p> <p>4 Q. Okay.</p> <p>5 A. Head of global balance sheet. The US</p> <p>6 treasurer role was focused on liquidity and</p> <p>7 capital management for the US Barclays Capital</p> <p>8 operations and the role with group treasury, the</p> <p>9 global balance sheet role is responsible for</p> <p>10 funding and hedging for the group's balance sheet</p> <p>11 globally.</p> <p>12 Q. Before joining Barclays</p> <p>13 in September 2008 you were employed by Lehman</p> <p>14 Brothers, correct?</p> <p>15 A. That is correct.</p> <p>16 Q. And what Lehman Brothers entities were</p> <p>17 you employed by?</p> <p>18 A. LBHI and LBI.</p> <p>19 Q. Collectively for the Lehman entities</p> <p>20 when did you first begin working for the Lehman</p> <p>21 entities?</p> <p>22 A. December 1996.</p> <p>23 Q. If you can give us a brief overview of</p> <p>24 your career at Lehman, the positions you held, the</p> <p>25 time periods that you held them for?</p>
Page 8	Page 9
<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI</p> <p>2 A. Yes. I joined Lehman as head of or</p> <p>3 manager for the fixed income derivatives product</p> <p>4 control team from 96 to 98.</p> <p>5 From 98 to 2000 I was manager of fixed income</p> <p>6 liquid markets product control.</p> <p>7 From 2000 to 2002 I was head of asset and</p> <p>8 liability management for Europe within the treasury area.</p> <p>9 From 2002 until 2005 I was head of assets and</p> <p>10 liability management for the group globally in New York.</p> <p>11 From 2005, or in 2005 I was international treasurer and then</p> <p>12 also through 2005 to 2000 onwards I was global treasurer.</p> <p>13 Q. And in your capacity as global treasurer</p> <p>14 for the Lehman entities, could you briefly</p> <p>15 describe what your duties were?</p> <p>16 A. Responsible for funding liquidity and</p> <p>17 capital management for the group.</p> <p>18 Q. And to whom did you directly report in</p> <p>19 that capacity?</p> <p>20 A. To the CFO.</p> <p>21 Q. In the time period, say, in 2008, who</p> <p>22 were your direct reports at Lehman?</p> <p>23 A. Most recently in 2008, Robert Azerad,</p> <p>24 Dan Fleming, Janet Birney.</p> <p>25 Q. The last name?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI</p> <p>2 A. B-I-R-N-E-Y. Julie Boyle, B-O-Y-L-E.</p> <p>3 Jackie F-R-O-M-M-E-R and Kevin Thatcher.</p> <p>4 Q. Mr. Azerad, what was his position and</p> <p>5 role at Lehman?</p> <p>6 A. He was responsible for liquidity</p> <p>7 management.</p> <p>8 Q. And Mr. Fleming?</p> <p>9 A. For cash management.</p> <p>10 Q. And when you use the phrase "liquidity</p> <p>11 management", what do you mean by that?</p> <p>12 A. I mean for the tracking, reporting, and</p> <p>13 execution of liquidity oversight.</p> <p>14 Q. Does liquidity management include</p> <p>15 arranging for repurchase agreements and other</p> <p>16 forms of financing for the Lehman entities?</p> <p>17 A. Generally not.</p> <p>18 Q. Who within Lehman would have been</p> <p>19 responsible for repurchase agreements and</p> <p>20 liquidity, financing of that nature?</p> <p>21 A. Secured financing was managed within the</p> <p>22 prime brokerage team and overseen by John Coghlan.</p> <p>23 Q. And John was not one of your direct</p> <p>24 reports, is that correct?</p> <p>25 A. He was not, no.</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 14</p> <p>2 repos was greater than would typically have been</p> <p>3 the case for a much larger set of repos.</p> <p>4 Q. And your personal involvement in those</p> <p>5 particular repos was much greater than your</p> <p>6 involvement had been on prior repos. Is that</p> <p>7 correct?</p> <p>8 MR. HUME: Object to the form of the</p> <p>9 question and to the lack of foundation. I think</p> <p>10 if you have e-mails you should show him to</p> <p>11 characterize what you are asking.</p> <p>12 MR. TAMBE: Do you have my question in</p> <p>13 mind?</p> <p>14 A. I am not sure, this point about much</p> <p>15 more involved, it is difficult for me to respond</p> <p>16 to. I would say that there was slightly more</p> <p>17 involvement than there would have been in a normal</p> <p>18 day's repo activity but I would not say that I was</p> <p>19 much more involved, no.</p> <p>20 Q. Let's see what you were involved in</p> <p>21 during that week broadly. I am going to start in</p> <p>22 this period beginning September 12, Friday</p> <p>23 through September 22, the Monday. Start at the</p> <p>24 beginning, September 12, and just generally tell</p> <p>25 me what your involvement was in the events of that</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 15</p> <p>2 weekend, in terms of possibly doing transactions</p> <p>3 with buyers, the filing of the bankruptcy, your</p> <p>4 role in the sale of assets to Barclays and finally</p> <p>5 the closing of the transaction on September 22,</p> <p>6 and we will take it in pieces but I want to get an</p> <p>7 overview of your recollection of your involvement</p> <p>8 during that ten day period. Okay?</p> <p>9 A. Okay.</p> <p>10 Q. Let's start with the weekend before the</p> <p>11 filing of the bankruptcy. What were you involved</p> <p>12 in starting on Friday, September 12?</p> <p>13 A. Friday was a trading day and so the</p> <p>14 range of activity included overseeing our</p> <p>15 financing position that day and our financing --</p> <p>16 our liquidity forecasting, which I would</p> <p>17 characterize as regular daily activity, regular</p> <p>18 daily oversight.</p> <p>19 There was due diligence, specifically</p> <p>20 with Bank of America for much of that day, and</p> <p>21 there was towards the end of the day discussion</p> <p>22 with Barclays directly and with the due diligence</p> <p>23 teams at one other potential buyer.</p> <p>24 Q. What other potential buyer?</p> <p>25 A. Nomura, but I didn't speak to them</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 16</p> <p>2 directly.</p> <p>3 Q. And I gather from your answer then you</p> <p>4 were speaking directly with the due diligence</p> <p>5 teams from Bank of America?</p> <p>6 A. Yes.</p> <p>7 Q. And you had direct discussions with</p> <p>8 Barclays towards the end of the day on the 12th?</p> <p>9 A. Yes, in the capacity of due diligence,</p> <p>10 not negotiations.</p> <p>11 Q. And when you mean in capacity of due</p> <p>12 diligence you were providing information?</p> <p>13 A. That is right.</p> <p>14 Q. In terms of liquidity management on the</p> <p>15 12th, were there any particular constraints on</p> <p>16 Lehman or challenges for Lehman in terms of</p> <p>17 managing its liquidity for operations on the 12th?</p> <p>18 A. Yes.</p> <p>19 Q. Can you describe what those constraints</p> <p>20 were?</p> <p>21 A. There was a large cash request from</p> <p>22 JP Morgan, which was for \$5 billion in cash, and</p> <p>23 that was a significant challenge. There were</p> <p>24 changes being made to secured funding haircuts and</p> <p>25 collateral agreements and there were margin</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 17</p> <p>2 requests from a variety of clients. So overall</p> <p>3 I would characterize it as extremely busy and</p> <p>4 complicated.</p> <p>5 Q. You used a phrase, "There were changes</p> <p>6 in secured funding haircuts", is that right? I</p> <p>7 want to understand what you mean by "haircuts"?</p> <p>8 A. The difference between the market value</p> <p>9 and the cash received is known as the haircut in</p> <p>10 a secured funding arrangement, the market value of</p> <p>11 the securities I should say.</p> <p>12 Q. So is it fair to say that the haircut</p> <p>13 allows you to determine how much cash you can</p> <p>14 borrow against a given market value of securities?</p> <p>15 A. That is correct.</p> <p>16 Q. And what were the changes in haircuts on</p> <p>17 the 12th, generally?</p> <p>18 A. Generally, they were that the haircuts</p> <p>19 were widening, but I don't have any specifics. I</p> <p>20 don't recall any specifics.</p> <p>21 Q. We go into the weekend of 13 and 14</p> <p>22 September. Describe for me what you were --</p> <p>23 describe for me what your duties were that weekend</p> <p>24 and what you were doing that weekend?</p> <p>25 A. Due diligence continued. Discussion</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 18</p> <p>2 with the internal team on potential outcomes and</p> <p>3 the management of potential purchases. Some</p> <p>4 discussion with external lawyers acting for the</p> <p>5 Board in terms of fairness opinions.</p> <p>6 Q. Generally, when you are talking about</p> <p>7 interactions you had with external counsel for</p> <p>8 Lehman Brothers during that time period, you can</p> <p>9 identify that you had those contacts but I would</p> <p>10 urge you not to disclose the substance of your</p> <p>11 conversations with external counsel for Lehman.</p> <p>12 Understood?</p> <p>13 A. Yes.</p> <p>14 Q. I mean when my question is requesting an</p> <p>15 answer of that type, just alert me if you think</p> <p>16 you are going to have to tell me about</p> <p>17 conversations with external counsel. Fair?</p> <p>18 A. Yes.</p> <p>19 Q. In terms of who the potential purchasers</p> <p>20 being discussed were over the weekend</p> <p>21 of September 13 and 14, you had BFA, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Barclays was still a potential</p> <p>24 purchaser?</p> <p>25 A. Barclays was the most likely purchaser.</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 19</p> <p>2 Q. Nomura, was that still a potential</p> <p>3 purchaser?</p> <p>4 A. Not that I was aware of.</p> <p>5 Q. Other than those three were any other</p> <p>6 potential purchasers discussed that weekend?</p> <p>7 A. Not that I am aware of.</p> <p>8 Q. When you say you had discussions with</p> <p>9 the internal team, who was the internal team that</p> <p>10 you were having discussions with?</p> <p>11 A. Largely with Ian Lowitt but with other</p> <p>12 members of Lehman's senior management.</p> <p>13 Q. Do you recall any of the other members</p> <p>14 of senior management that you had discussions with</p> <p>15 that weekend?</p> <p>16 A. Bart McDade, Tom Russo, Stephen</p> <p>17 Berkenfeld, Alex Kirk.</p> <p>18 Q. Any others?</p> <p>19 A. I can't recall.</p> <p>20 Q. When did you first learn that Lehman</p> <p>21 Brothers Holdings Inc was contemplating</p> <p>22 a bankruptcy filing?</p> <p>23 A. I believe first contemplated on</p> <p>24 Saturday.</p> <p>25 Q. Were you asked to perform any tasks</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 20</p> <p>2 specifically in connection with contemplated</p> <p>3 filing of the bankruptcy?</p> <p>4 A. Only one comes to mind, which was to</p> <p>5 make a payment to Weil Gotshal.</p> <p>6 Q. We go ahead with the bankruptcy filing</p> <p>7 on September 15. Describe for me the kinds of</p> <p>8 things you were doing on September 15. What was</p> <p>9 your day like?</p> <p>10 A. So the filing happened in the early</p> <p>11 hours of the morning and there was great confusion</p> <p>12 about the consequences of that, so much of the day</p> <p>13 was spent fielding telephone calls from various</p> <p>14 parts of the organization within Lehman, some from</p> <p>15 external counterparties seeking clarification as</p> <p>16 to the position, which entities may have filed and</p> <p>17 the position of the remaining entities, and trying</p> <p>18 to oversee the position and funding for LBI, the</p> <p>19 US broker dealer.</p> <p>20 Q. Describe for me what actions you took</p> <p>21 and conversations you had in connection with the</p> <p>22 funding for LBI, the US broker dealer on the 15th?</p> <p>23 A. We had been instructed that the Fed</p> <p>24 would be providing secured financing and that</p> <p>25 other secured financing arrangements would be</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 21</p> <p>2 maturing, so the discussion to the extent that</p> <p>3 there was any was really just about executing that</p> <p>4 transaction.</p> <p>5 Q. When you say "that transaction", the Fed</p> <p>6 transaction?</p> <p>7 A. With the Fed, yes.</p> <p>8 Q. Were you involved in executing the</p> <p>9 transaction with the Fed?</p> <p>10 A. Not executing it, no.</p> <p>11 Q. Were you involved with negotiating the</p> <p>12 transaction with the Fed?</p> <p>13 A. No.</p> <p>14 Q. What was your involvement with the Fed</p> <p>15 transaction?</p> <p>16 A. Only overseeing the collateral, the</p> <p>17 collateral allocation and the cash received</p> <p>18 afterwards.</p> <p>19 Q. When you say "overseeing collateral</p> <p>20 allocation", what was your role in overseeing?</p> <p>21 What specifically did you do to oversee collateral</p> <p>22 allocation on the Fed repo?</p> <p>23 A. I reviewed the collateral that had been</p> <p>24 allocated and the cash that had been received</p> <p>25 against that collateral. My role was largely</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 22</p> <p>2 analytical and much of the liquidity oversight is</p> <p>3 an analytical function. It is explaining the</p> <p>4 changes in the liquidity position and explaining</p> <p>5 the financing arrangements in the context of the</p> <p>6 overall financial picture and balance sheet of the</p> <p>7 entity. So I don't know -- my group did not book</p> <p>8 the transactions or the allocations, but clearly</p> <p>9 it was important to understand the substance of</p> <p>10 the transaction and detail of the transaction that</p> <p>11 was executed to get a clear picture of the</p> <p>12 financial position of the entity.</p> <p>13 Q. Who booked the transaction?</p> <p>14 A. The secured funding area.</p> <p>15 Q. Mr. Coghlan's group?</p> <p>16 A. Yes.</p> <p>17 Q. Did you have conversations with</p> <p>18 Mr. Coghlan about the Fed funding on the 15th?</p> <p>19 A. I don't recall.</p> <p>20 Q. You said you reviewed the collateral.</p> <p>21 What were you reviewing the collateral allocated</p> <p>22 for. Let me restate that. You stated earlier you</p> <p>23 reviewed the collateral allocated. For what</p> <p>24 purpose were you reviewing the collateral</p> <p>25 allocated?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 23</p> <p>2 A. I have already explained that, to</p> <p>3 understand the financial position of the entity.</p> <p>4 It is obviously pertinent to the financial</p> <p>5 position of the entity to understand the</p> <p>6 collateral that has been transferred and the value</p> <p>7 received for that.</p> <p>8 Q. So your review includes what specific</p> <p>9 pieces of collateral that have been allocated, is</p> <p>10 that right?</p> <p>11 A. That is right.</p> <p>12 Q. And you also did a review of what values</p> <p>13 had been ascribed to that collateral?</p> <p>14 A. That is right.</p> <p>15 Q. Let's talk about the values ascribed to</p> <p>16 the collateral allocated. Who determines the</p> <p>17 values of the collateral, the market value of the</p> <p>18 collateral that is being allocated for financing?</p> <p>19 A. The tri-party provider in the case of</p> <p>20 a tri-party repo transaction.</p> <p>21 Q. And was the Fed funding a tri-party</p> <p>22 funding?</p> <p>23 A. It was.</p> <p>24 Q. Who was the third party?</p> <p>25 A. JP Morgan and Chase.</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 24</p> <p>2 Q. So would it be correct to say that</p> <p>3 JP Morgan and Chase would determine the values for</p> <p>4 the collateral allocated by Lehman for the Fed</p> <p>5 funding on September 15, is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. And the applicable haircuts would then</p> <p>8 be applied to the JP Morgan valuation, is that</p> <p>9 correct?</p> <p>10 A. That is correct.</p> <p>11 Q. Now, Lehman would have its own values</p> <p>12 for the collateral that was allocated to this</p> <p>13 funding, correct?</p> <p>14 A. That is correct.</p> <p>15 Q. Was part of your review to see how the</p> <p>16 JP Morgan values differed from the Lehman values</p> <p>17 for the same collateral?</p> <p>18 A. It was.</p> <p>19 Q. Do you recall generally if the JP Morgan</p> <p>20 values were higher, lower or the same?</p> <p>21 A. I don't recall.</p> <p>22 Q. Do you recall there being any</p> <p>23 significant discrepancy at any time with the</p> <p>24 JP Morgan prices for the collateral during that</p> <p>25 week, September 15?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 25</p> <p>2 MR. HUME: Object to the form of the</p> <p>3 question. Any time during the week?</p> <p>4 MR. TAMBE: Yes.</p> <p>5 A. I don't recall.</p> <p>6 Q. Generally, as a matter of mechanics,</p> <p>7 when the tri-party provider had done a valuation</p> <p>8 of collateral and that valuation was significantly</p> <p>9 lower than the Lehman valuation, that would affect</p> <p>10 how much money you could borrow, correct?</p> <p>11 A. That is correct.</p> <p>12 Q. So you would probably disagree with the</p> <p>13 valuation done by the third tri-party provider,</p> <p>14 correct?</p> <p>15 MR. HUME: Object to the form of the</p> <p>16 question.</p> <p>17 A. No.</p> <p>18 Q. You had no ability to disagree?</p> <p>19 A. We had no ability to disagree, nor do we</p> <p>20 have an ability to negotiate the haircuts provided</p> <p>21 by the Fed or by other lenders.</p> <p>22 Q. I am not talking about the haircut, I am</p> <p>23 talking about the market value of the collateral</p> <p>24 before you apply the haircuts?</p> <p>25 A. We had no ability to object.</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 26</p> <p>2 I certainly did not.</p> <p>3 Q. Do you recall what the term was of the</p> <p>4 Fed funding that was put in place on 15 September?</p> <p>5 A. I believe it was overnight.</p> <p>6 Q. Moving to the 16th, was that facility</p> <p>7 rolled over on the 16th?</p> <p>8 A. The majority of the facility was rolled</p> <p>9 over. Barclays provided some financing as well so</p> <p>10 the amount of the facility with the Fed reduced.</p> <p>11 Q. Before we get to the 16th, on the 15th,</p> <p>12 other than dealing with the Fed funding, were you</p> <p>13 also involved in any discussions about a possible</p> <p>14 acquisition of the North American assets by</p> <p>15 Barclays?</p> <p>16 A. I was not, no.</p> <p>17 Q. Were you aware that Barclays had</p> <p>18 returned to Lehman to engage Lehman in discussions</p> <p>19 about that?</p> <p>20 A. I was aware, yes.</p> <p>21 Q. How did you become aware of that?</p> <p>22 A. I can't remember who advised me but</p> <p>23 someone, one of the senior members of the firm had</p> <p>24 advised me that that was the case.</p> <p>25 Q. On the 15th through the morning of the</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 27</p> <p>2 16th were you involved in any negotiations with</p> <p>3 Barclays about the purchase by Barclays of</p> <p>4 Lehman's North American assets?</p> <p>5 A. I was not.</p> <p>6 Q. But you were aware those negotiations</p> <p>7 were taking place, correct?</p> <p>8 A. I was.</p> <p>9 Q. Did you provide any due diligence</p> <p>10 information in that time period?</p> <p>11 A. I don't believe so.</p> <p>12 Q. What was your understanding of what</p> <p>13 transaction was being contemplated on the 15th</p> <p>14 over into the 16th between Lehman and Barclays?</p> <p>15 A. I understood that it was the purchase of</p> <p>16 the business and assets, some selection of assets</p> <p>17 of the North American Lehman Brothers business.</p> <p>18 Q. And either on the 15th or 16th did you</p> <p>19 have any understanding of what the economics of</p> <p>20 that deal were?</p> <p>21 MR. HUME: Objection, lacks foundation.</p> <p>22 A. Not really. I mean, I was aware of the</p> <p>23 balance sheet that was being agreed at a very</p> <p>24 summary level and, as I am sure you know, Martin</p> <p>25 Kelly sent me a note advising me of some of the</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 28</p> <p>2 details, so I had a very general sense of the</p> <p>3 substance of the transaction, but to say that</p> <p>4 I understood the economics would be, you know,</p> <p>5 would not be accurate.</p> <p>6 Q. The Martin Kelly e-mail that you are</p> <p>7 referring to, is that the one that talks about the</p> <p>8 5 billion-dollar loss?</p> <p>9 A. That is right.</p> <p>10 Q. Let's take a look at that e-mail. It is</p> <p>11 136A.</p> <p>12 (Exhibit 136A marked for identification)</p> <p>13 MR. HUME: Is that a new number?</p> <p>14 MR. TAMBE: Yes.</p> <p>15 MR. HUME: Has this document not been</p> <p>16 made an exhibit yet?</p> <p>17 MR. TAMBE: I just do not know if it has</p> <p>18 been. Wherever possible we are trying to avoid</p> <p>19 re-marking exhibits. My guess is this one has</p> <p>20 been. We could not figure out what the number</p> <p>21 was.</p> <p>22 Mr. Tonucci, I have placed before you</p> <p>23 a document marked Exhibit 136A. Is that the</p> <p>24 e-mail that you were referring to?</p> <p>25 A. That is correct.</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 29</p> <p>2 Q. That is an e-mail from Martin Kelly, you</p> <p>3 are cc'd on that e-mail at the bottom. Do you see</p> <p>4 that?</p> <p>5 A. Yes.</p> <p>6 Q. There is a reference in there to a</p> <p>7 "\$5 billion all in economic loss versus our</p> <p>8 marks". Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. What was your understanding of that</p> <p>11 phrase? What did that mean?</p> <p>12 A. I read that to mean that there would be</p> <p>13 a discount to the marks at that time on the</p> <p>14 assets.</p> <p>15 Q. And this notion of a discount on the</p> <p>16 marks on the assets, was that a feature of the</p> <p>17 transaction that ultimately persisted with the</p> <p>18 transaction as it unfolded?</p> <p>19 MR. HUME: Objection, calls for</p> <p>20 speculation and lacks foundation.</p> <p>21 A. Can you repeat?</p> <p>22 Q. Let me rephrase. You understood the</p> <p>23 5 billion dollars all in economic loss versus our</p> <p>24 marks to be a reference to a discount off the</p> <p>25 marks, correct?</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 30</p> <p>2 A. Yes.</p> <p>3 Q. The deal that was ultimately done and</p> <p>4 closed on September 22, that too included</p> <p>5 a discount off of Lehman's marks, correct?</p> <p>6 A. That is correct.</p> <p>7 Q. Okay, and the amount of that discount</p> <p>8 off of Lehman's marks was about \$5 billion, is</p> <p>9 that right?</p> <p>10 MR. HUME: Objection, lacks foundation.</p> <p>11 A. It is uncertain, because obviously there</p> <p>12 were a lot of valuation movements and so</p> <p>13 I couldn't say with certainty, but certainly what</p> <p>14 I can say is versus the valuations that I recall</p> <p>15 seeing from our analysis it was about that number.</p> <p>16 Q. About \$5 billion?</p> <p>17 A. About \$5 billion.</p> <p>18 Q. Was it your understanding that about</p> <p>19 a \$5 billion discount was a negotiated amount of</p> <p>20 discount?</p> <p>21 MR. HUME: Objection, lacks foundation.</p> <p>22 A. Only insofar as what I can read in this</p> <p>23 e-mail.</p> <p>24 Q. Here is what I am getting at. This</p> <p>25 e-mail, 136A, is sent to you on</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 31</p> <p>2 early September 16, correct? The deal that is</p> <p>3 contemplated on the 16th changes in many ways by</p> <p>4 the 22nd, correct?</p> <p>5 A. Yes.</p> <p>6 Q. The amount of the discount in this</p> <p>7 e-mail, the \$5 billion you are telling me was</p> <p>8 about the discount when all was said and done at</p> <p>9 the end of the day, is that correct?</p> <p>10 A. That is correct.</p> <p>11 Q. Is it your understanding that the</p> <p>12 \$5 billion amount was the agreed upon discount for</p> <p>13 the transaction?</p> <p>14 MR. HUME: Objection, the witness has</p> <p>15 said he did not participate in the negotiations</p> <p>16 and so the question lacks foundation.</p> <p>17 A. Only as I said from what I read here. I</p> <p>18 didn't have any further discussions about the</p> <p>19 discount that I can recall.</p> <p>20 Q. Do you have an understanding of how the</p> <p>21 discount was effected, how was the discount made</p> <p>22 available to Barclays?</p> <p>23 MR. HUME: Objection, vague and</p> <p>24 ambiguous.</p> <p>25 A. Do you want to reword that?</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 32</p> <p>2 Q. Do you have trouble with the question?</p> <p>3 A. Not sure what you mean.</p> <p>4 Q. How did Barclays get the</p> <p>5 5 billion-dollar discount?</p> <p>6 A. Right. I think what was contemplated in</p> <p>7 the negotiation, and what was executed in terms of</p> <p>8 the settlement probably differed slightly, you</p> <p>9 know, and involved over the week the settlement of</p> <p>10 the transaction, meaning the actual transfer of</p> <p>11 securities and cash was through the repo</p> <p>12 agreements, and essentially the termination of</p> <p>13 those repo agreements.</p> <p>14 Q. Was the discount given to Barclays by</p> <p>15 defaulting on the repo?</p> <p>16 MR. HUME: Objection. You are asking</p> <p>17 the witness very general questions about</p> <p>18 a complicated transaction without walking him</p> <p>19 through any of the details of that transaction. I</p> <p>20 think the line of questioning lacks foundation.</p> <p>21 MR. TAMBE: You have an objection to</p> <p>22 form, right, Hamish? So noted. Answer the</p> <p>23 question, please.</p> <p>24 MR. HUME: I think the line of</p> <p>25 questioning is calling for speculation and lacks</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 33</p> <p>2 foundation.</p> <p>3 MR. TAMBE: Do you remember my question?</p> <p>4 Probably not. Do you want it read back?</p> <p>5 A. Yes, please.</p> <p>6 (Read back)</p> <p>7 A. Yes, I would say that was the way in</p> <p>8 which the transaction was settled, so that is</p> <p>9 fair.</p> <p>10 Q. Would it also be fair to say, therefore,</p> <p>11 that the discount was embedded in the haircut on</p> <p>12 the repo transaction?</p> <p>13 MR. HUME: Objection, what discount?</p> <p>14 MR. TAMBE: The 5 billion-dollar</p> <p>15 discount.</p> <p>16 MR. HUME: What 5 billion-dollar</p> <p>17 discount? You have not established or laid any</p> <p>18 record of foundation.</p> <p>19 MR. TAMBE: Hamish, make objection to</p> <p>20 form, move on. Don't make speaking objections.</p> <p>21 MR. HUME: The objection is this is</p> <p>22 a deliberately ambiguous and misleading line of</p> <p>23 questioning.</p> <p>24 MR. TAMBE: Do you have my question in</p> <p>25 mind?</p>

<p style="text-align: right;">Page 34</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 34</p> <p>2 A. Could you repeat it please or read it</p> <p>3 back.</p> <p>4 (Read back)</p> <p>5 A. In a repo transaction there is haircut,</p> <p>6 a difference between the market value and the cash</p> <p>7 value received. You could view that as</p> <p>8 a discount. I think in this case it is fair to</p> <p>9 say that that was the settlement mechanics and</p> <p>10 therefore the way that the difference between</p> <p>11 market value and cash paid was accomplished.</p> <p>12 There was in that sense a discount.</p> <p>13 Q. So I understand your last answer, there</p> <p>14 was a 5 billion-dollar differential, roughly,</p> <p>15 between the cash paid by Barclays and the market</p> <p>16 value of the collateral they received, correct?</p> <p>17 A. That was when I looked at our analysis,</p> <p>18 that was about the size of the number.</p> <p>19 Q. Let's go back to the week of the 16th.</p> <p>20 You get the e-mail from Martin Kelly telling you</p> <p>21 about at least an agreement in principle, correct?</p> <p>22 A. That is correct.</p> <p>23 Q. Let's move forward from there. You have</p> <p>24 got on the 16th a Fed funding facility in place,</p> <p>25 correct. Right?</p>	<p style="text-align: right;">Page 35</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 35</p> <p>2 A. That is correct.</p> <p>3 Q. And you have got a repo from Barclays as</p> <p>4 well, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And there was a pre-existing master</p> <p>7 repurchase agreement with Barclays, correct?</p> <p>8 A. I believe so.</p> <p>9 Q. That was amended on Monday September 15?</p> <p>10 A. I believe so.</p> <p>11 Q. Were you involved in the amendment to</p> <p>12 that?</p> <p>13 A. I was not.</p> <p>14 Q. Who was?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you have an under standing of what</p> <p>17 the terms were of the Barclays -- the amended</p> <p>18 Barclays repurchase agreement?</p> <p>19 A. I don't really recall, no.</p> <p>20 Q. Am I right to believe that there are</p> <p>21 haircut schedules associated with repo agreements?</p> <p>22 A. Correct.</p> <p>23 Q. There was such a haircut schedule in</p> <p>24 connection with the Fed repo, correct?</p> <p>25 A. There was.</p>
<p style="text-align: right;">Page 36</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 36</p> <p>2 Q. And there was a haircut schedule on the</p> <p>3 Barclays repo, correct?</p> <p>4 A. I believe so, yes.</p> <p>5 Q. Do you recall there being any</p> <p>6 significant difference between the haircuts on the</p> <p>7 Fed repo and the haircuts on the Barclays repo?</p> <p>8 MR. HUME: Objection.</p> <p>9 A. There were certainly differences, I</p> <p>10 can't recall how significant.</p> <p>11 Q. Do you remember if there were particular</p> <p>12 asset classes in which there were differences?</p> <p>13 A. I don't, no.</p> <p>14 Q. The Fed repo was an overnight repo,</p> <p>15 right?</p> <p>16 A. Correct.</p> <p>17 Q. So it rolled over from the 15th to the</p> <p>18 16th?</p> <p>19 A. Correct.</p> <p>20 Q. And rolled over again from the 16th to</p> <p>21 the 17th?</p> <p>22 A. Not the same size, no.</p> <p>23 Q. Tell me briefly what the changes were,</p> <p>24 if any, in the size of the Fed repo from Monday to</p> <p>25 Tuesday to later in the week?</p>	<p style="text-align: right;">Page 37</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 37</p> <p>2 A. I can't recall the exact details. I</p> <p>3 recall that the Barclays repo on the -- again, I</p> <p>4 am not certain about this but the Barclays repo on</p> <p>5 the 16th, I believe, was for \$5 billion. On the</p> <p>6 17th I believe it was for \$8 billion and then on</p> <p>7 the Thursday there was obviously a much bigger</p> <p>8 transaction and so that changed the Fed repo,</p> <p>9 which became zero.</p> <p>10 Q. Let's talk about that bigger transaction</p> <p>11 on Thursday, okay. Describe for me how the Fed</p> <p>12 repo went to zero and what happened with the</p> <p>13 Barclays repo on Thursday?</p> <p>14 A. It is difficult for me to talk about the</p> <p>15 mechanics because I am not that close to the</p> <p>16 operational mechanics of the repo being unwound,</p> <p>17 but my understanding was that the repo unwound on</p> <p>18 the Thursday morning, which would be typical in</p> <p>19 a tri-party repo, that an overnight repo would</p> <p>20 unwind, you would return the collateral and the</p> <p>21 cash and the transactions would then settle with</p> <p>22 that collateral that was released, and at the end</p> <p>23 of the day a new financing transaction would be</p> <p>24 settled.</p> <p>25 In this instance there was complexity because</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 38</p> <p>2 JP Morgan was the tri-party agent for Lehman and had been</p> <p>3 the tri-party agent in the transaction with the Fed. BONY</p> <p>4 was the tri-party agent for Barclays and so there was a need</p> <p>5 to transfer collateral from JP Morgan to Bank of New York</p> <p>6 tri-party system, and I am not sure about the mechanics</p> <p>7 involved in that transfer but it was clearly a more</p> <p>8 complicated transaction than if the financing had just been</p> <p>9 through the JP Morgan tri-party system.</p> <p>10 Q. Is it your understanding that on</p> <p>11 Thursday, in this bigger transaction on Thursday,</p> <p>12 Barclays effectively replaced the Fed and the Fed</p> <p>13 funding transaction?</p> <p>14 A. I was not involved in the discussions</p> <p>15 with Barclays or with the Fed on the removal or</p> <p>16 replacement of the Fed in that transaction, so I</p> <p>17 can't really talk to the specifics, but my</p> <p>18 understanding was that the Fed transaction was</p> <p>19 going to mature on the Thursday and they were not</p> <p>20 really providing any financing subsequently.</p> <p>21 Q. Wednesday night into Thursday, do you</p> <p>22 recall the size of the Fed funding being</p> <p>23 approximately \$45 billion?</p> <p>24 A. Yes, that sounds about right.</p> <p>25 Q. And the Fed was holding approximately</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 39</p> <p>2 \$50 billion in collateral against that financing?</p> <p>3 A. That sounds right.</p> <p>4 Q. And the big transaction that you</p> <p>5 described on Thursday effectively had Barclays</p> <p>6 coming in and putting in \$45 billion to pay off</p> <p>7 the Fed repo, correct?</p> <p>8 A. I understood that they were going to be</p> <p>9 putting in 45, that it was going to be</p> <p>10 a 45 billion-dollar transaction, yes.</p> <p>11 Q. And all the collateral that was being</p> <p>12 held by the Fed was then going to be transferred</p> <p>13 to Barclays, correct?</p> <p>14 MR. HUME: Objection, asked and</p> <p>15 answered. He has already explained.</p> <p>16 A. To be honest, I was not close enough to</p> <p>17 the actual transaction that was being booked to</p> <p>18 know exactly where all the collateral was going to</p> <p>19 end up, nor was I close enough to any agreements</p> <p>20 with Barclays or with the Fed as to where all of</p> <p>21 the collateral was going to end up.</p> <p>22 Q. So effectively on Thursday the Fed</p> <p>23 funding goes down to zero, correct?</p> <p>24 A. That is correct.</p> <p>25 Q. And they exit the financing picture at</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 40</p> <p>2 that point?</p> <p>3 A. That is correct.</p> <p>4 Q. And what you have left is the Barclays</p> <p>5 repo, correct?</p> <p>6 A. That is correct.</p> <p>7 Q. Describe for me what happens with the</p> <p>8 Barclays repo over the next few business dates?</p> <p>9 We are now into Thursday on to Friday the 19th.</p> <p>10 MR. HUME: Again, objection to the form</p> <p>11 of the question and the lack of foundation.</p> <p>12 A. That transaction happened on Thursday.</p> <p>13 That was essentially the last of that transaction</p> <p>14 in the way that I think about it. It was executed</p> <p>15 on Thursday night and settled Thursday night into</p> <p>16 Friday morning and that was the end of that</p> <p>17 transaction. After that it was just a matter of</p> <p>18 that transaction terminating and the collateral</p> <p>19 being rebooked as a purchase by Barclays and as</p> <p>20 a sale by Lehman.</p> <p>21 Q. Do you recall if the Barclays repo was</p> <p>22 terminated on Friday?</p> <p>23 A. I don't.</p> <p>24 Q. The legal documentation for the</p> <p>25 Lehman/Barclays transaction, are you generally</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 41</p> <p>2 familiar with that documentation?</p> <p>3 A. With parts of it.</p> <p>4 Q. What do you understand the operative</p> <p>5 legal documentation to be for that transaction?</p> <p>6 MR. HUME: I am going to object again.</p> <p>7 You are asking -- he said he is not a negotiator.</p> <p>8 You have shown him their documents and you keep</p> <p>9 asking him to speculate about the entire</p> <p>10 transaction. I will counsel the witness not to</p> <p>11 speculate.</p> <p>12 A. I am not a lawyer but I believe that the</p> <p>13 asset purchase agreement is the document that you</p> <p>14 are referring to.</p> <p>15 Q. Is that a document that you -- when is</p> <p>16 the first time you saw the asset purchase</p> <p>17 agreement?</p> <p>18 A. Not until a long time after the</p> <p>19 transaction closed.</p> <p>20 Q. Is it fair to say during the week of the</p> <p>21 15th to the 22nd you did not see the asset</p> <p>22 purchase agreement?</p> <p>23 A. I didn't, no.</p> <p>24 Q. Did you see something called</p> <p>25 a clarification letter?</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 42</p> <p>2 A. Not until long after the close.</p> <p>3 Q. You know what I mean by "clarification</p> <p>4 letter"?</p> <p>5 A. I know what you mean when you say the</p> <p>6 clarification letter in relation to this</p> <p>7 transaction, yes.</p> <p>8 Q. I am sorry, I cut you off. What is your</p> <p>9 understanding of the clarification letter?</p> <p>10 MR. HUME: Objection. Same objection.</p> <p>11 You are asking someone who was not a negotiator,</p> <p>12 who is not a lawyer to speculate as to the meaning</p> <p>13 of these documents that you are not even showing</p> <p>14 him.</p> <p>15 A. Only that it was a clarification to the</p> <p>16 purchase agreement.</p> <p>17 Q. Do you know when it was negotiated?</p> <p>18 A. I believe on the -- prior to closing on</p> <p>19 the -- I don't remember. Actually, I don't know</p> <p>20 when it was negotiated.</p> <p>21 Q. Did anyone ever tell you why</p> <p>22 a clarification letter was needed?</p> <p>23 A. No.</p> <p>24 Q. Did you review any drafts of</p> <p>25 a clarification letter?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 43</p> <p>2 MR. HUME: Objection, asked and</p> <p>3 answered.</p> <p>4 A. No.</p> <p>5 Q. During the week of September 15, so from</p> <p>6 the 15th through the 19th, were you aware of any</p> <p>7 mark downs on the Lehman assets on Lehman's own</p> <p>8 books?</p> <p>9 MR. HUME: Objection, vague and</p> <p>10 ambiguous.</p> <p>11 A. There was a great deal of volatility in</p> <p>12 prices over that week so I can't really sort of</p> <p>13 answer whether there were any specific mark downs.</p> <p>14 I was not part of the process of re-marking those</p> <p>15 books or re-marking the assets, but there was</p> <p>16 a great deal of price volatility and so I would</p> <p>17 certainly expect that there would be asset price</p> <p>18 movements and I would expect most of them to be</p> <p>19 down.</p> <p>20 Q. Were you aware of a general mark down</p> <p>21 process in connection with Lehman's assets during</p> <p>22 that week?</p> <p>23 A. No.</p> <p>24 Q. Going back to Thursday and the closing</p> <p>25 out of the Fed facility, and then the Barclays</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 44</p> <p>2 repo, you said the Bank of New York was</p> <p>3 a tri-party provider for the Barclays repo, is</p> <p>4 that right?</p> <p>5 A. That is right.</p> <p>6 Q. So they would have played a similar role</p> <p>7 to the role played by JP Morgan on the Fed</p> <p>8 facility, correct?</p> <p>9 A. That is correct.</p> <p>10 Q. And therefore Bank of New York would</p> <p>11 have had prepared valuations of the collateral</p> <p>12 that was being posted on the Barclays repo,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. And they did that, correct?</p> <p>16 A. I believe so, yes.</p> <p>17 Q. Are you familiar generally with the Bank</p> <p>18 of New York valuations of the collateral posted by</p> <p>19 Lehman?</p> <p>20 A. Generally, yes.</p> <p>21 Q. Are you aware of any discrepancies</p> <p>22 between the Bank of New York valuations for the</p> <p>23 collateral and Lehman valuations of that same</p> <p>24 collateral?</p> <p>25 MR. HUME: Objection to form, what</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 45</p> <p>2 collateral?</p> <p>3 Q. The Barclays collateral.</p> <p>4 A. There was certainly a very comprehensive</p> <p>5 reconciliation required because of the number of</p> <p>6 securities that were moving, and some of those</p> <p>7 securities were quite complicated in terms of not</p> <p>8 just the valuation but the actual amounts. These</p> <p>9 are mortgage securities, mortgage pass throughs,</p> <p>10 so there was a very big reconciliation required</p> <p>11 and there were differences identified in the</p> <p>12 details of the securities. There were differences</p> <p>13 in the valuations and for certain there were</p> <p>14 differences in the valuations.</p> <p>15 Q. And this reconciliation process that you</p> <p>16 just described, when did that take place?</p> <p>17 A. I think the reconciliation that I</p> <p>18 remember sort of in detail was after the closing.</p> <p>19 I think we tried to do a reconciliation on the</p> <p>20 Friday. When I say "we", it was within the</p> <p>21 operations team, and certainly after the 22nd or</p> <p>22 on the 22nd, and after there were more detailed</p> <p>23 reconciliations produced.</p> <p>24 Q. When you got to Barclays were you</p> <p>25 involved in dealing with Barclays' accountants in</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 46</p> <p>2 accounting for the economics of the acquisition of</p> <p>3 Lehman by Barclays?</p> <p>4 A. We were asked to contribute to the</p> <p>5 initial balance sheet, the preparation of an</p> <p>6 initial balance sheet, but I would say that my</p> <p>7 involvement with the accountants was as an</p> <p>8 information provider and was sporadic. I was not</p> <p>9 involved in -- after the initial balance sheet,</p> <p>10 components of the initial balance sheet were</p> <p>11 provided, our balance sheet commitment, I don't</p> <p>12 think I did very much in terms of the accounting</p> <p>13 for the transaction.</p> <p>14 Q. In addition to helping with the</p> <p>15 preparation of the initial balance sheet, did you</p> <p>16 play any role in reviewing the valuation of the</p> <p>17 acquisition in connection with the year-end</p> <p>18 results for Barclays?</p> <p>19 A. I saw the balance sheet, the acquisition</p> <p>20 balance sheet a number of times, and as I say I</p> <p>21 was peripherally involved. The accounting for</p> <p>22 this was quite complicated because of the</p> <p>23 different entities that were involved, and so yes</p> <p>24 I saw some details but the overall economics</p> <p>25 I would say was not really clear to me. I was not</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 47</p> <p>2 sort of involved at that level.</p> <p>3 Q. You are generally aware that Barclays</p> <p>4 has reported a gain on the acquisition, correct?</p> <p>5 A. Yes. I mean, I am aware of what was</p> <p>6 publicly disclosed. I have not seen the details</p> <p>7 of the calculation of that.</p> <p>8 Q. What is your general understanding of</p> <p>9 the magnitude of the gain reported by Barclays for</p> <p>10 the year-end 2008 from the Lehman acquisition?</p> <p>11 A. That a gain on acquisition was reported</p> <p>12 of over 2 billion pounds.</p> <p>13 Q. Over 2 billion pounds?</p> <p>14 A. Yes.</p> <p>15 Q. Is it your understanding that there may</p> <p>16 well be additional gains from the acquisition that</p> <p>17 have not yet been reported by Barclays?</p> <p>18 MR. HUME: Objection.</p> <p>19 A. I am not aware of that.</p> <p>20 Q. You don't know one way or the other?</p> <p>21 A. I don't.</p> <p>22 Q. Did you ever talk to anyone as to why</p> <p>23 Barclays was getting a 5 billion-dollar discount</p> <p>24 on this transaction?</p> <p>25 A. I don't think I did, no.</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 48</p> <p>2 Q. You told us that you reviewed the asset</p> <p>3 purchase agreement and the clarification letter at</p> <p>4 some time after the closing of the transaction?</p> <p>5 A. No, I didn't say I reviewed them.</p> <p>6 I said I was shown parts of the asset purchase</p> <p>7 agreement and the clarification letter.</p> <p>8 Q. Even better. Do you recall whether the</p> <p>9 asset purchase agreement or the clarification</p> <p>10 letter reflect a 5 billion-dollar discount?</p> <p>11 MR. HUME: Objection to the form of the</p> <p>12 question. What do you mean "reflect"?</p> <p>13 Q. Do you have my question in mind?</p> <p>14 A. Could you repeat it, please?</p> <p>15 (Read back)</p> <p>16 MR. HUME: Again I am going to object to</p> <p>17 the question since you have not shown him the</p> <p>18 agreements, he is not a lawyer and he was not</p> <p>19 a negotiator.</p> <p>20 Q. You were shown parts of the agreements,</p> <p>21 right, that is what you said?</p> <p>22 A. I just don't know.</p> <p>23 Q. Let me ask you the question. You were</p> <p>24 shown parts of these agreements, the asset</p> <p>25 purchase agreement and the clarification letter,</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 49</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. The parts that you were shown, did they</p> <p>5 show a 5 billion-dollar discount?</p> <p>6 MR. HUME: Do you recall is the</p> <p>7 question.</p> <p>8 A. I don't recall, no.</p> <p>9 Q. What parts of the agreement do you</p> <p>10 recall being shown?</p> <p>11 A. I don't know. I don't know. I didn't</p> <p>12 see the whole agreement so -- I don't think I saw</p> <p>13 the whole agreement. I saw components of it</p> <p>14 related to the various schedules of assets that</p> <p>15 were being transferred and to some of the other</p> <p>16 assets that were included in the agreement.</p> <p>17 Q. Was there a particular task or event in</p> <p>18 connection with which you were shown these pieces</p> <p>19 or parts of the transaction documents?</p> <p>20 A. Yes, in the preparation I would say of</p> <p>21 revisions to Schedule B to the agreement and in</p> <p>22 the analysis of the 15c3 receivables.</p> <p>23 Q. And what role did you play in connection</p> <p>24 with the revisions to Schedule B?</p> <p>25 A. Providing some analytical support to the</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 50</p> <p>2 determination of available collateral.</p> <p>3 Q. Does that mean you determined what</p> <p>4 collateral was available to be included in</p> <p>5 Schedule B?</p> <p>6 A. No.</p> <p>7 Q. What do you mean by "analytical</p> <p>8 support"?</p> <p>9 A. It means that I helped coordinate the</p> <p>10 process of reviewing collateral that may be</p> <p>11 available that was being extracted from various</p> <p>12 systems that you would typically use, whether it</p> <p>13 was the operations systems or some of the</p> <p>14 databases which aggregate that information and</p> <p>15 provide a different cut of analysis. So my work,</p> <p>16 my involvement, was in reviewing that to ensure</p> <p>17 that it was being appropriately queried and</p> <p>18 analyzed and understood, validated.</p> <p>19 Q. Who else was involved in this process?</p> <p>20 A. The operations team were really the</p> <p>21 experts in the operating systems and therefore in</p> <p>22 understanding the availability of collateral.</p> <p>23 Q. Who was the operations team?</p> <p>24 A. Alastair --</p> <p>25 Q. Who was the operations team doing this?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 51</p> <p>2 A. Alastair Blackwell manages that team.</p> <p>3 I would say that Jim Hraske was the person most</p> <p>4 involved.</p> <p>5 Q. And this event that you are describe,</p> <p>6 the revisions to Schedule B, this is post-closing,</p> <p>7 correct?</p> <p>8 A. That is correct.</p> <p>9 Q. And in the weeks immediately after the</p> <p>10 closing of the transaction?</p> <p>11 A. Pre-closing there was an analysis</p> <p>12 performed to determine the unencumbered</p> <p>13 collateral, as I am sure you are aware, which was</p> <p>14 the basis for the original Schedule B. The</p> <p>15 subsequent analysis I would say was to correct for</p> <p>16 errors that may have been made in the initial</p> <p>17 aggregation of information in the initial</p> <p>18 analysis, and to reflect some of the breaks in the</p> <p>19 different systems that were used, stock record</p> <p>20 breaks for example. That exercise continued</p> <p>21 sporadically through the remaining three months of</p> <p>22 2008.</p> <p>23 Q. Again, just talking about the revisions</p> <p>24 to Schedule B, I want to talk about the</p> <p>25 post-closing revisions to Schedule B. The errors</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 52</p> <p>2 you are talking about, is it errors about</p> <p>3 identifying particular pieces of collateral? Is</p> <p>4 that the nature?</p> <p>5 A. That is correct.</p> <p>6 Q. When you said "stock record breaks",</p> <p>7 what do you mean by "stock record breaks"?</p> <p>8 A. These are breaks between the internal</p> <p>9 accounting records and the external depository</p> <p>10 statements.</p> <p>11 Q. In terms of ownership of particular</p> <p>12 securities, is that what you mean?</p> <p>13 A. In terms of possession.</p> <p>14 Q. Did these revisions to Schedule B that</p> <p>15 took place post-close affect the value of the</p> <p>16 collateral that was listed on Schedule B, the</p> <p>17 total value?</p> <p>18 MR. HUME: Objection. The revisions to</p> <p>19 Schedule B are being referred to -- I believe the</p> <p>20 record is unclear whether you mean revisions to</p> <p>21 the schedule filed a week after the closing or any</p> <p>22 subsequent work after that. For the line of</p> <p>23 questioning to be clear that needs to be made</p> <p>24 clear in the questions.</p> <p>25 MR. TAMBE: I am talking about the</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 53</p> <p>2 revisions to Schedule B that you talked about,</p> <p>3 Mr. Tonucci.</p> <p>4 MR. HUME: There have been a number of</p> <p>5 answers that he has provided so I still think the</p> <p>6 question is unclear.</p> <p>7 MR. TAMBE: So the revisions to Schedule</p> <p>8 B that you were talking about, did those revisions</p> <p>9 affect the total value of the Schedule B?</p> <p>10 A. I am referring to the revisions that</p> <p>11 happened in the period after the initial filing of</p> <p>12 Schedule B and I am not sure when and if the --</p> <p>13 you know, when and if revisions were actually</p> <p>14 lodged with the court. I am not a lawyer and I am</p> <p>15 not sure what the legal process was but certainly</p> <p>16 the internal calculations of unencumbered</p> <p>17 collateral is what I am referring to as the</p> <p>18 revisions to Schedule B that happened essentially</p> <p>19 after the initial filing of Schedule B in</p> <p>20 late September, and those revisions changed the</p> <p>21 collateral detail significantly. So the values</p> <p>22 clearly changed along with the composition of the</p> <p>23 assets.</p> <p>24 Q. Did they change up, increasing value, or</p> <p>25 did they change down?</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 54</p> <p>2 A. I believe they changed in both</p> <p>3 directions.</p> <p>4 Q. As an aggregate?</p> <p>5 A. I don't know.</p> <p>6 Q. Do you have an understanding as to the</p> <p>7 origination of Schedule B?</p> <p>8 A. I do.</p> <p>9 Q. What is your understanding about the</p> <p>10 origination of Schedule B?</p> <p>11 A. The origination of Schedule B was to</p> <p>12 list the unencumbered collateral that was to be</p> <p>13 included within the sale and purchase agreement.</p> <p>14 Q. So this was unencumbered collateral</p> <p>15 other than the collateral that had already been</p> <p>16 posted to Barclays under the Barclays repo,</p> <p>17 correct?</p> <p>18 A. That is correct.</p> <p>19 Q. And is it your recollection that the</p> <p>20 origination of Schedule B goes back to Friday,</p> <p>21 19 September?</p> <p>22 MR. HUME: Objection, lacks foundation.</p> <p>23 A. That is correct.</p> <p>24 Q. And do you recall there being an effort</p> <p>25 on September 19 to find additional collateral for</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 55</p> <p>2 Barclays?</p> <p>3 A. I do.</p> <p>4 Q. What can you tell us about the efforts</p> <p>5 to find additional collateral for Barclays?</p> <p>6 A. That we were asked on the morning of the</p> <p>7 19th to find if there was additional collateral to</p> <p>8 include in the transaction.</p> <p>9 Q. Asked by whom?</p> <p>10 A. I believe I was asked by Ian Lowitt.</p> <p>11 Q. Did Ian Lowitt tell you why he was</p> <p>12 asking you to find additional collateral?</p> <p>13 A. He said that it was necessary for the</p> <p>14 transaction to close and he reiterated that</p> <p>15 through the day.</p> <p>16 Q. In addition to Schedule B, were there</p> <p>17 other collections of assets that were put together</p> <p>18 to provide additional collateral to Barclays?</p> <p>19 A. There were receivables in the form of</p> <p>20 the 15c3 reserve, which were reviewed, and through</p> <p>21 the course of the Friday there were other</p> <p>22 receivables that were also reviewed to determine</p> <p>23 if they could be included as assets or collateral</p> <p>24 in the sales agreement.</p> <p>25 Q. What other receivables?</p>
Page 56	Page 57
<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 56</p> <p>2 A. We reviewed derivative receivables and</p> <p>3 margin balances, FX receivables, that is foreign</p> <p>4 exchange. I should add actually we also reviewed</p> <p>5 some bank receivables, because there had been cash</p> <p>6 posted with some of the clearing banks, so that</p> <p>7 was also reviewed.</p> <p>8 Q. Safe to say you looked in every corner</p> <p>9 for assets and receivables that you could deliver</p> <p>10 to Barclays?</p> <p>11 MR. HUME: Objection, vague and</p> <p>12 ambiguous.</p> <p>13 A. We reviewed the balance sheet to see</p> <p>14 where there might be additional assets.</p> <p>15 Q. You looked everywhere, right?</p> <p>16 A. We looked across the whole balance</p> <p>17 sheet.</p> <p>18 Q. And this was a directive from Mr. Lowitt</p> <p>19 to find these assets, correct?</p> <p>20 A. That is correct.</p> <p>21 Q. And you found a bunch of unencumbered</p> <p>22 assets and put them in Schedule B?</p> <p>23 A. That is correct.</p> <p>24 Q. And then you found these 15c3</p> <p>25 receivables, is that right?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 57</p> <p>2 A. I would say we identified the 15c3</p> <p>3 receivables as an asset that could be transferred.</p> <p>4 Q. Who is the "we" who identified those</p> <p>5 receivables?</p> <p>6 A. It was again overseen by Ian but it was</p> <p>7 myself, Martin Kelly, Robert Azerad.</p> <p>8 Q. What was approximately the value of the</p> <p>9 15c3 receivables that you identified?</p> <p>10 A. There was uncertainty, a great deal of</p> <p>11 uncertainty about the excess, but there was</p> <p>12 certainty about the actual deposits that had been</p> <p>13 made for 15c3, which included a cash deposit with</p> <p>14 Wells Fargo for a billion dollars and securities</p> <p>15 which in the calculation had been valued at, I</p> <p>16 believe, \$769 million.</p> <p>17 Q. And so that is about what, \$1.7 billion</p> <p>18 total?</p> <p>19 A. That is correct. There may have been</p> <p>20 other balances. I think that there were other</p> <p>21 securities balances also that were on deposit but</p> <p>22 I recall specifically those two.</p> <p>23 Q. On the Friday the 19th, is it your</p> <p>24 recollection that the 15c3 receivables were</p> <p>25 identified as assets or receivables that in fact</p>

<p style="text-align: right;">Page 58</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 58</p> <p>2 could be transferred to Barclays?</p> <p>3 MR. HUME: Objection to the lack of</p> <p>4 foundation.</p> <p>5 A. That is correct, that is my</p> <p>6 understanding.</p> <p>7 Q. From your earlier answer it seems that</p> <p>8 there were receivables that you identified that</p> <p>9 maybe you concluded could not be transferred to</p> <p>10 Barclays, is that fair?</p> <p>11 A. That is correct.</p> <p>12 Q. The 15c3's could be transferred to</p> <p>13 Barclays, right?</p> <p>14 MR. HUME: Objection to the vagueness of</p> <p>15 the question. What do you mean by "could"?</p> <p>16 A. I mean, I would try and clarify this --</p> <p>17 Q. Sure,</p> <p>18 A. The thinking was that there was</p> <p>19 a surplus, in that calculation that although it</p> <p>20 was uncertain as to both the amount of the surplus</p> <p>21 and the requirement, these represented assets</p> <p>22 which were transferable and, you know,</p> <p>23 identifiable and transferable. I would say that</p> <p>24 the distinction with some of the other receivables</p> <p>25 was that it was much more difficult, given our</p>	<p style="text-align: right;">Page 59</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 59</p> <p>2 information, our sort of accounting position at</p> <p>3 that time, our transactional detail at that time,</p> <p>4 it was much more difficult to identify specific</p> <p>5 receivables that could have been transferred. So</p> <p>6 it was more a matter of that these were much more</p> <p>7 easily identifiable, but yes, we did believe that</p> <p>8 they were transferable, or would become</p> <p>9 transferable. It was always understood that there</p> <p>10 was a regulatory approval that would be required</p> <p>11 but that they would become transferable.</p> <p>12 Q. Did you have any discussions with</p> <p>13 Mr. Lowitt as to whether transferring those</p> <p>14 receivables was part of the deal with Barclays?</p> <p>15 MR. HUME: Objection, what receivables?</p> <p>16 Q. The 15c3 receivables?</p> <p>17 A. I do recall talking to him about that,</p> <p>18 yes.</p> <p>19 Q. What did he tell you?</p> <p>20 A. We were looking for potential other</p> <p>21 assets and so we were going to include this in the</p> <p>22 agreement.</p> <p>23 Q. Do you know one way or the other whether</p> <p>24 the 15c3 receivables were part of the asset</p> <p>25 purchase agreement?</p>
<p style="text-align: right;">Page 60</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 60</p> <p>2 A. I can't recall if they were part of the</p> <p>3 asset purchase agreement or some clarification</p> <p>4 letter.</p> <p>5 Q. The parts of the asset purchase</p> <p>6 agreement or the clarification letter that were</p> <p>7 shown to you, do you recall whether they had any</p> <p>8 reference to the 15c3 assets?</p> <p>9 A. I don't recall. I don't recall which.</p> <p>10 I do recall that there was in one or other of</p> <p>11 those documents a reference to that, to those</p> <p>12 assets.</p> <p>13 Q. The other receivables you mentioned, the</p> <p>14 derivatives receivables, could you describe what</p> <p>15 you mean by derivative receivables?</p> <p>16 A. Yes. Particularly for LBI there were</p> <p>17 substantial margins posted at the exchanges, which</p> <p>18 were accounted for, essentially accounted for as</p> <p>19 receivables, and those are what I refer to as</p> <p>20 derivative receivables.</p> <p>21 Q. Would an example of derivative</p> <p>22 receivables be these types of receivables that</p> <p>23 were posted with the OCC?</p> <p>24 MR. HUME: Objection to the form of the</p> <p>25 question. These type? Which type of receivables?</p>	<p style="text-align: right;">Page 61</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 61</p> <p>2 Q. Derivative receivables?</p> <p>3 A. I would say that would be consistent</p> <p>4 with my understanding.</p> <p>5 Q. And the OCC is the Options Clearing</p> <p>6 Corp?</p> <p>7 A. That is correct.</p> <p>8 Q. Do you recall in the bits and pieces of</p> <p>9 the asset purchase agreement, the APA and the</p> <p>10 clarification letter that was shown to you whether</p> <p>11 those documents provided for derivatives</p> <p>12 receivables to be transferred to Barclays?</p> <p>13 MR. HUME: Objection. You are asking</p> <p>14 this witness to give an opinion on a legal</p> <p>15 document that you have not shown him. He is not</p> <p>16 a lawyer and he said he was not a negotiator of</p> <p>17 the deal.</p> <p>18 MR. TAMBE: You have an objection to</p> <p>19 foundation and form.</p> <p>20 MR. HUME: I am not just objecting to</p> <p>21 foundation. It is an inappropriate, misleading</p> <p>22 question.</p> <p>23 MR. TAMBE: Don't make speaking</p> <p>24 objections. Object to form, move on, we will get</p> <p>25 through this faster.</p>

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	62	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	63
2	MR. HUME: It is not just an objection		2	A. There was insufficient detail to be able	
3	to form.		3	to confirm that, that that still existed at that	
4	MR. TAMBE: Are you instructing him not		4	point in time.	
5	to answer?		5	Q. At some subsequent point in time was	
6	MR. HUME: I am objecting to		6	a determination made as to those FX receivables?	
7	a misleading line of questioning.		7	A. I don't know.	
8	MR. TAMBE: Thank you.		8	Q. Another category of receivables you	
9	Mr. Tonucci, do you have my question in		9	identified were bank receivables?	
10	mind?		10	A. Yes.	
11	(Read back)		11	Q. Again, the same series of questions on	
12	A. I don't recall.		12	the bank receivables; was a determination made on	
13	Q. Another type of receivable you described		13	the 19th that those were transferable to Barclays?	
14	before were FX receivables?		14	A. On the 19th there was a determination	
15	A. Um hum.		15	made that it was too complicated and too uncertain	
16	Q. Did you identify any foreign exchange		16	to be able to say whether those were transferable.	
17	receivables that could be transferred to Barclays?		17	Q. And on some subsequent date after the	
18	A. There was a receivable balance for		18	19th was a determination made as to whether those	
19	forward settling foreign exchange on the LBI		19	could be transferred?	
20	balance sheet.		20	A. I don't know.	
21	Q. And the determination was that those		21	Q. You were in New York during this week,	
22	receivables could be transferred to Barclays, is		22	correct?	
23	that right?		23	A. That is correct.	
24	MR. HUME: Objection to the form,		24	Q. Do you recall accepting your offer of	
25	objection to the vagueness of the word --		25	employment at Barclays?	
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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	64	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	65
2	A. I do.		2	Q. You were accepting an offer of	
3	Q. When did you do that?		3	employment for Barclays, right?	
4	A. I believe it was 26 September.		4	A. Yes.	
5	Q. You sent an e-mail on the morning of the		5	Q. What offer were you accepting on	
6	22nd accepting your offer, right?		6	Monday September 22 at 1:04 pm GMT?	
7	MR. HUME: Objection, lacks foundation.		7	A. I can't recall the details at that point	
8	A. I can't remember.		8	but I believe that the offers went out over the	
9	Q. Do you recall about an hour after the		9	weekend, but I don't recall the exact details of	
10	ink dried on the clarification letter you sent an		10	it at that point. I recall the hard copy in more	
11	e-mail?		11	detail. I am not too sure when that was sent out.	
12	MR. HUME: Objection to form.		12	Q. If I understand your answer, at some	
13	A. I don't remember.		13	point over the weekend of the 20th/21st you	
14	Q. Let me show it to you.		14	received a soft copy of the offer?	
15	(Exhibit 137A marked for identification)		15	A. Yes.	
16	I have handed you a one page document		16	Q. And at some point during the week of the	
17	marked Exhibit 137A. Do you have that before you?		17	22nd you actually signed a hard copy?	
18	A. I do.		18	A. That is correct.	
19	Q. Do you recognize this as an e-mail that		19	Q. But you knew before the 20th that you	
20	you sent to an e-mail box called "Accept Barclays		20	would be offered employment by Barclays, correct?	
21	offer at Lehman.com"?		21	MR. HUME: Objection.	
22	A. Yes.		22	A. I knew on the evening of the 19th that	
23	Q. And the subject simply says: "I accept".		23	I would receive an offer from Barclays.	
24	Correct?		24	Q. Had you had any discussions with anyone	
25	A. Yes.		25	prior to September 19 about receiving an offer	

<p style="text-align: right;">Page 66</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 66</p> <p>2 from Barclays?</p> <p>3 A. No.</p> <p>4 Q. What was the communication you received</p> <p>5 on the evening of September 19 about an offer from</p> <p>6 Barclays?</p> <p>7 A. After the Lehman and the Barclays and</p> <p>8 the other teams had gone to the bankruptcy court,</p> <p>9 after the day's work had been completed and I was</p> <p>10 going to head home, and I had been up all night so</p> <p>11 I was exhausted, and so I am not too sure, I am</p> <p>12 not too sure of the exact time, before departing</p> <p>13 for the day Ian Lowitt advised me that I would</p> <p>14 receive an offer, and he gave me the general terms</p> <p>15 that I would likely be offered.</p> <p>16 Q. When you say "the general terms", the</p> <p>17 general economic terms of the offer?</p> <p>18 A. The general economic terms, but I was</p> <p>19 not sure of the position at that point.</p> <p>20 Q. Prior to that September 19, had you had</p> <p>21 discussions with Ian about what your future held</p> <p>22 for you?</p> <p>23 A. No.</p> <p>24 Q. No discussions?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 67</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 67</p> <p>2 Q. Did you try to get any assurance from</p> <p>3 him or anyone else about whether there was a place</p> <p>4 for you at Barclays?</p> <p>5 A. No.</p> <p>6 Q. You knew he would be heading to</p> <p>7 Barclays, right?</p> <p>8 A. I didn't, no.</p> <p>9 Q. Did you know whether any of the folks</p> <p>10 that you were working with at Lehman that week</p> <p>11 were going to be headed to Barclays?</p> <p>12 A. I expected that there would be some that</p> <p>13 were heading to Barclays but I was not sure of</p> <p>14 exactly whom.</p> <p>15 Q. Barclays was buying the North American</p> <p>16 operations, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And they needed people to run those</p> <p>19 operations?</p> <p>20 A. Correct.</p> <p>21 Q. So your expectation was that some</p> <p>22 significant number of Lehman folks would in fact</p> <p>23 get offers from Barclays?</p> <p>24 A. That is correct.</p> <p>25 Q. And you certainly hoped to be included</p>
<p style="text-align: right;">Page 68</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 68</p> <p>2 in that group?</p> <p>3 A. Yes, I think it is fair to say I hoped</p> <p>4 to be included.</p> <p>5 Q. Your compensation at Lehman for the</p> <p>6 calendar year 2007, the full calendar year, could</p> <p>7 you briefly describe what your total Lehman</p> <p>8 compensation was?</p> <p>9 A. I was on an ex-pat arrangement, so I</p> <p>10 will leave that aside. The basic components of</p> <p>11 compensation, total compensation of \$2 million.</p> <p>12 Q. And was that broken out into cash and</p> <p>13 non-cash?</p> <p>14 A. Yes. Salary was around -- I think it</p> <p>15 was \$250,000. The cash was around, I would say</p> <p>16 around a million dollars total cash, cash bonus</p> <p>17 and then stock was the remainder.</p> <p>18 Q. And the stock component that you</p> <p>19 received, your 2007 compensation, that was</p> <p>20 immediately vested stock?</p> <p>21 A. No, that vested in the regular schedule,</p> <p>22 which is 5 years for Lehman.</p> <p>23 (Exhibit 138A marked for identification)</p> <p>24 Q. Sir, I have placed before you a 3-page</p> <p>25 document marked exhibit 138A. Is that a copy of</p>	<p style="text-align: right;">Page 69</p> <p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 69</p> <p>2 the offer of employment you received from Barclays</p> <p>3 Capital over the weekend of September 20/21?</p> <p>4 A. Yes.</p> <p>5 Q. It carries a date of September 22 on the</p> <p>6 first page, right?</p> <p>7 A. Correct.</p> <p>8 Q. And that is your signature on the last</p> <p>9 page?</p> <p>10 A. That is correct.</p> <p>11 Q. Looking at the first page of</p> <p>12 Exhibit 138A, the economic terms of your</p> <p>13 employment are as set forth up there, correct?</p> <p>14 A. That is correct.</p> <p>15 Q. You have a compensation of 268,336 per</p> <p>16 annum?</p> <p>17 A. That is right.</p> <p>18 Q. There is a guaranteed cash bonus for</p> <p>19 2008, do you see that?</p> <p>20 A. I do.</p> <p>21 Q. That is in the amount of 1.185 million?</p> <p>22 A. Correct.</p> <p>23 MR. HUME: Sorry, I am unsure. We are</p> <p>24 going to designate obviously any portion of the</p> <p>25 transcript that relates to compensation highly</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 70</p> <p>2 confidential. Is it understood we can do that</p> <p>3 after the deposition?</p> <p>4 MR. TAMBE: Yes, and I think the</p> <p>5 agreement that was reached at the Felder</p> <p>6 deposition we assume carries for all depositions.</p> <p>7 MR. HUME: For all designations we can</p> <p>8 do it later rather than during.</p> <p>9 MR. TAMBE: You can do it later. Let's</p> <p>10 just follow the Felder rule. I think it was that</p> <p>11 we were going to treat the entire transcript as</p> <p>12 highly confidential.</p> <p>13 MR. MAGUIRE: Treating the entire</p> <p>14 transcript as highly confidential for a week and</p> <p>15 make the designations within the week.</p> <p>16 MR. TAMBE: Going back to the</p> <p>17 guaranteed cash bonus of 1.185 million, did you</p> <p>18 receive that in February 2009?</p> <p>19 A. I am not sure if it was February</p> <p>20 or March but it was received in 2009.</p> <p>21 Q. And was that the amount of the cash</p> <p>22 bonus you received in February or March 2009?</p> <p>23 A. That is correct.</p> <p>24 Q. Did you also receive the next item, the</p> <p>25 2008 EPP recommendation. Do you see that?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 71</p> <p>2 A. I do.</p> <p>3 Q. And did you?</p> <p>4 A. I did.</p> <p>5 Q. Was it roughly that amount?</p> <p>6 A. Yes.</p> <p>7 Q. The next category, "special cash award",</p> <p>8 do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. That is a special cash award of 700,000,</p> <p>11 do you see that?</p> <p>12 A. That is right, yes.</p> <p>13 Q. Do you have an understanding as to why</p> <p>14 you were receiving a special cash award?</p> <p>15 A. I assumed that it was -- I assumed that</p> <p>16 it was being awarded to a group of senior</p> <p>17 employees that Barclays felt were going to be of</p> <p>18 future value to the organization.</p> <p>19 Q. Have you received any portion of the</p> <p>20 special cash award as of today?</p> <p>21 A. No.</p> <p>22 Q. You had a change in position you said</p> <p>23 early on in February or March 09?</p> <p>24 A. That is right.</p> <p>25 Q. Has your compensation increased as</p>
Page 72	Page 73
<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 72</p> <p>2 a result of that change in position?</p> <p>3 A. My basic salary I would say is</p> <p>4 consistent and I am not sure of my bonus.</p> <p>5 Q. Do you have any guaranteed cash bonus</p> <p>6 component in your new position?</p> <p>7 A. No.</p> <p>8 Q. Do you have any guaranteed EPP?</p> <p>9 A. No.</p> <p>10 Q. Any special cash awards?</p> <p>11 A. No.</p> <p>12 (Exhibit 139A marked for identification).</p> <p>13 Q. I have placed before you a 2-page</p> <p>14 document marked Exhibit 139A. Let me know when</p> <p>15 you have had a chance to review it.</p> <p>16 A. I have reviewed it, yes.</p> <p>17 Q. A couple of questions about some of the</p> <p>18 names that appear on this e-mail chain. Some you</p> <p>19 have mentioned this morning but a couple of others</p> <p>20 I want to ask you about. David Aronow, what</p> <p>21 position did Mr. Aronow have?</p> <p>22 A. He is within the operations team.</p> <p>23 Q. At Lehman?</p> <p>24 A. At Lehman.</p> <p>25 Q. And he made the move to Barclays as</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 73</p> <p>2 well?</p> <p>3 A. Yes.</p> <p>4 Q. John Palchynsky, what position did he</p> <p>5 have at Lehman?</p> <p>6 A. He was in the operations team.</p> <p>7 Q. Did he make the move to Barclays?</p> <p>8 A. Yes.</p> <p>9 Q. John Feraca. Was he in the operations</p> <p>10 team at Lehman as well?</p> <p>11 A. He was in the prime services team.</p> <p>12 Q. Did he make the move to Barclays?</p> <p>13 A. Yes.</p> <p>14 Q. Monty Forrest, what was his position at</p> <p>15 Lehman?</p> <p>16 A. He was in the prime services team.</p> <p>17 Q. Did he make the move to Barclays?</p> <p>18 A. He did.</p> <p>19 Q. Neil Ullman, what was his position at</p> <p>20 Lehman?</p> <p>21 A. He was in the operations team.</p> <p>22 Q. Did he make the move to Barclays?</p> <p>23 A. He did.</p> <p>24 Q. Dan Fleming, you have mentioned before.</p> <p>25 Did he make the move to Barclays?</p>

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 74	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 75
2	A. He did.	2	Q. There is an e-mail dated September 19,
3	Q. Just a question about the e-mail address	3	2008. Do you see that?
4	for Mr. Fleming. It has in parentheses "TSY"	4	A. I do.
5	after it. Do you see that?	5	Q. Around 6:28 pm, right?
6	A. Yes.	6	A. Yes.
7	Q. Any understanding what that means?	7	Q. So was this the first that you had heard
8	A. Treasury.	8	about your employment at Barclays?
9	Q. And that was a designation used within	9	A. I believe that I had heard perhaps an
10	Lehman?	10	hour before that.
11	A. I don't know. I think that the TSY	11	Q. Was this the first that you had heard
12	designation is used where there may be more than	12	that all these other people were also going to be
13	one person, just to identify which one it is.	13	going to Barclays?
14	Q. Craig Jones, what was his position	14	A. This is a relatively junior person in an
15	within Lehman?	15	operations area, who could have been speculating.
16	A. He was in treasury.	16	It was not clear to me that all of these people
17	Q. Did he make it over to Barclays?	17	were going to be moving over.
18	A. He did.	18	Q. This chain of e-mails has a subject line
19	Q. Look at the top half of Exhibit 139A.	19	that says: "Urgent, tri unwind". Do you see that?
20	There is a message there from Mr. Palchynsky to	20	A. I do.
21	several people, including you. Do you see that?	21	Q. And what was the "Urgent tri unwind"
22	A. I do.	22	about, if you recall?
23	Q. He says in there: "Anyway, see you all	23	A. It was to do with the cash balance that
24	at BarCap". Do you see that?	24	was placed with JP Morgan on the night by Barclays
25	A. I do.	25	on the night of the 18th, and was part of the
Page 76		Page 77	
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 76	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI 77
2	tri-party arrangement, and it was being unwound.	2	Q. Do you recall if this is a document that
3	Q. And the collection of people on these	3	you saw during that week, the week
4	e-mails were involved in assisting with that	4	of September 15, 2008?
5	unwind?	5	A. Yes, I believe I saw it on the 16th.
6	A. They were involved in the repo	6	Q. Do you know in connection with what
7	operations.	7	event or action did you see this document?
8	Q. So they would have dealt with that	8	A. In relation to the Barclays contemplated
9	unwind and other aspects of the repo?	9	purchase.
10	A. Yes.	10	Q. Who showed it to you?
11	MR. TAMBE: Thank you. We will take	11	A. I think it was Ian Lowitt.
12	a short break now.	12	Q. Did you play any role in the preparation
13	(Break from 8:55 to 9:14 am.).	13	of this document, Exhibit 19?
14	Q. I am showing you a document previously	14	A. I did not.
15	marked as Exhibit 19. Have you seen this document	15	Q. We had earlier talked about the
16	before today, sir?	16	\$5 billion discount. Do you know if the
17	A. I have.	17	\$5 billion discount was reflected in this
18	Q. What do you understand it to be?	18	document, Exhibit 19?
19	MR. HUME: Objection to the form.	19	MR. HUME: Objection, lacks foundation.
20	A. It was the balance sheet that was I	20	A. I do not know.
21	believe, you know, part of the negotiation for the	21	Q. If you look under the "liabilities"
22	sale to Barclays, so the estimated balance sheet,	22	column, last two entries above the total are
23	Q. And the estimated balance sheet for what	23	titled "Cure PMT" and "Comp". Do you see that?
24	entity?	24	A. I do.
25	A. For the part of LBI that was being sold.	25	Q. And there is a total of about four and

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1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	86	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	87
2	A. No.		2	A. Yes.	
3	Q. Any idea what that means?		3	Q. Martin Kelly?	
4	MR. HUME: Objection, calls for		4	A. Yes.	
5	speculation.		5	Q. You are shown as a cc on that?	
6	A. No, not really.		6	A. Yes.	
7	MR. HUME: He is asking you to		7	Q. Do you understand the information that	
8	speculate.		8	is contained on page 2 of Exhibit 140A?	
9	Q. Just in broad dollar terms, was it your		9	A. Not entirely sure I do.	
10	understanding that the amount of the Fed facility		10	Q. Do you recall there being a discussion	
11	on or about September 18, 2008, was a funding of		11	or an analysis during that week of September 15	
12	about \$44 billion or \$45 billion against a market		12	about assets available to be transferred by LBI to	
13	value of collateral of about \$50 billion?		13	Barclays?	
14	A. Yes, that sounds right.		14	A. I do, yes.	
15	(Exhibit 140A marked for identification)		15	Q. What do you recall about that analysis	
16	Q. I have had placed before you a document		16	or discussion?	
17	marked Exhibit 140A, a 3-page document. Take		17	A. That obviously we were trying to be as	
18	a moment to look at it, let me know when you are		18	specific as possible about not just the assets	
19	done. You done?		19	that were on the balance sheet but actually what	
20	A. I have read through it.		20	was going to be available for transfer. The	
21	Q. Do you recognize that document?		21	difference between the balance sheet from a sort	
22	A. Actually, I can't recall going through		22	of accounting or GAPP perspective from a funding	
23	this, no.		23	perspective, was really one of granularity, in	
24	Q. Do you see the cover e-mail is an e-mail		24	terms of what has settled and exactly where the	
25	from Mr. Robert Azerad?		25	securities are that are in the repo agreements or	
Page 88			Page 89		
1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	88	1	HIGHLY CONFIDENTIAL - PAOLO TONUCCI	89
2	reverse repo agreements. So the effort was to try		2	adjusted assets of 72.6 billion.	
3	and establish what was exactly available for		3	MR. HUME: Before you asked if it was	
4	transfer.		4	a balance sheet of LBI.	
5	Q. Is it your understanding that the assets		5	MR. TAMBE: The record is what it is.	
6	that were listed on the LBI balance sheet, not all		6	You have an objection to make, make it, let's move	
7	of those ultimately were transferable to Barclays?		7	on.	
8	A. Yes.		8	MR. HUME: I think the record is	
9	Q. We had seen earlier in Exhibit 19, which		9	misleading now. You asked a question that the	
10	I think is still before you, if you can just turn		10	witness did not understand.	
11	to that --		11	MR. TAMBE: Unless you are challenging	
12	A. Yes.		12	the witness I am not sure what that objection is	
13	Q. This is a balance sheet I think you told		13	all about.	
14	us of LBI as of September 16, 2008, correct?		14	Let's go back to the Exhibit 19, LBI	
15	A. Yes 15th, I think, I assume.		15	balance sheet adjusted total assets 72.65 billion.	
16	Q. And that has a total adjusted assets or		16	Correct.	
17	adjusted total assets of 72.6 billion. Do you see		17	A. I can see that, yes.	
18	that?		18	Q. And is it your recollection that over	
19	MR. HUME: Objection. Did you ask		19	some -- over the course of that week, the week	
20	whether this Exhibit 19 was a balance sheet for		20	of September 15, the assets of LBI available for	
21	LBI.		21	transfer were less than 72.65 billion?	
22	MR. TAMBE: Yes?		22	A. Yes.	
23	MR. HUME: Was that the question?		23	Q. It went down to a number of about	
24	MR. TAMBE: That was not the question,		24	50 billion, correct?	
25	no. The question was whether it as had a total		25	A. I am not sure it ever went as low as	

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 90</p> <p>2 that, but anyway it certainly went down.</p> <p>3 Q. How low did it go in your recollection?</p> <p>4 A. Somewhere between 50 and 60 billion.</p> <p>5 Q. And part of the reason for that change</p> <p>6 from 72 to the 50 to 60 billion range is assets</p> <p>7 that could not be transferred to Barclays,</p> <p>8 correct?</p> <p>9 MR. HUME: Objection, lacks foundation.</p> <p>10 A. Yes, that is right. I mean, insofar as</p> <p>11 they were transactions that were being settled</p> <p>12 elsewhere, and so the securities would not be</p> <p>13 available for transfer to Barclays.</p> <p>14 Q. Going back to Exhibit 140A, the 3-pager,</p> <p>15 on the third page of that exhibit, there is an</p> <p>16 analysis set forth. Do you see that?</p> <p>17 A. I do.</p> <p>18 Q. Do you have an understanding of what</p> <p>19 that analysis is?</p> <p>20 A. General, yes.</p> <p>21 Q. Generally, could you tell us what that</p> <p>22 analysis is?</p> <p>23 A. It is a summarization of the inventory</p> <p>24 which has been reversed in from other entities or</p> <p>25 repo'd out. The LBI proprietary matched book is</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 91</p> <p>2 a representation of the inventory which is both</p> <p>3 reversed in and repo'd out.</p> <p>4 Q. If you can just explain what a matched</p> <p>5 book is? It is a phrase I have seen in some of</p> <p>6 the e-mails. I want to get a better understanding</p> <p>7 of what that is.</p> <p>8 A. The matched book is a financing business</p> <p>9 where securities are financed on behalf of</p> <p>10 customers and the matching that is on the other</p> <p>11 side, they are financed to the street or with</p> <p>12 other customers, so it is an activity where the</p> <p>13 financing should be matched.</p> <p>14 Q. And presumably Lehman are in some spread</p> <p>15 in the course of this matched activity?</p> <p>16 A. It should, yes.</p> <p>17 Q. During the course of this week</p> <p>18 of September 15 was the matched book reduced down</p> <p>19 effectively to zero?</p> <p>20 A. As close as possible to zero.</p> <p>21 Q. Were you involved during this time</p> <p>22 period, September 18, September 19, in identifying</p> <p>23 or helping to identify those assets of LBI that</p> <p>24 would be available for transfer to Barclays?</p> <p>25 A. Yes, particularly in the sort of</p>
Page 92	Page 93
<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 92</p> <p>2 18th/19th period.</p> <p>3 Q. And Mr. Azerad was involved in that</p> <p>4 process as well?</p> <p>5 A. Yes.</p> <p>6 Q. Was Mr. Martin Kelly involved in that as</p> <p>7 well?</p> <p>8 A. Yes.</p> <p>9 Q. What was Mr. Kelly's position?</p> <p>10 A. Martin was the financial controller so</p> <p>11 he was the accounting -- he was essentially the</p> <p>12 accountant for the group, chief accountant for the</p> <p>13 group.</p> <p>14 Q. Your co-equal or your subordinate?</p> <p>15 A. We were both direct reports to the CFO.</p> <p>16 Q. Gerry Reilly, Gerard Reilly, what was</p> <p>17 his position?</p> <p>18 A. He was the product controller, the head</p> <p>19 of products control, which is really the business</p> <p>20 CFO, business units' CFO.</p> <p>21 Q. Which business units?</p> <p>22 A. He actually oversaw all of the business</p> <p>23 units.</p> <p>24 Q. Give me a description of what you would</p> <p>25 consider a business unit?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 93</p> <p>2 A. Just any of the fixed income for</p> <p>3 example, any of the trading businesses.</p> <p>4 Q. So fixed income was a business unit that</p> <p>5 he would oversee?</p> <p>6 A. Right. I would think of Gerry as being</p> <p>7 the management accountant and Martin being the</p> <p>8 entity accountant, if that makes any sense.</p> <p>9 Q. Not entirely, but that is fine. We will</p> <p>10 move on. Francis Pearn, P-E-A-R-N?</p> <p>11 A. Yes.</p> <p>12 Q. Who was Francis?</p> <p>13 A. He worked for Gerry.</p> <p>14 Q. Were Gerry and Francis involved in this</p> <p>15 process we talked about, identifying the assets of</p> <p>16 LBI that were in fact transferable to Barclays?</p> <p>17 A. They were, yes.</p> <p>18 (Exhibit 141A marked for identification)</p> <p>19 Q. I have handed you an exhibit marked</p> <p>20 Exhibit 141A, which is a cover e-mail with</p> <p>21 a spreadsheet attached to it. If you could</p> <p>22 generally look at the cover e-mail and the</p> <p>23 spreadsheet attached, I will ask you some general</p> <p>24 questions and then maybe some specific ones about</p> <p>25 the spreadsheet. Just let me know when you are</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 114</p> <p>2 So given that the -- you have to understand that</p> <p>3 this is a transaction where the actual assets being</p> <p>4 transferred over is really only being finalized on that</p> <p>5 morning, and is still being reviewed, and so we were trying</p> <p>6 to provide support and assistance insofar as, you know,</p> <p>7 determining the securities and a potential value for those.</p> <p>8 But this is not something which had already been reviewed</p> <p>9 and values confirmed by Barclays, and the BONY system could</p> <p>10 also have had problems with valuing some of these</p> <p>11 securities.</p> <p>12 Q. The one large position you were talking</p> <p>13 about, that is Pine?</p> <p>14 A. Yes.</p> <p>15 Q. What was Pine?</p> <p>16 A. Pine was a CLO, which is</p> <p>17 a collateralized loan obligation.</p> <p>18 Q. I have handed you a document that was</p> <p>19 previously marked as Exhibit 47. It is about</p> <p>20 3 pages of cover e-mails, 4 pages of cover</p> <p>21 e-mails, and a large spreadsheet. If you can</p> <p>22 review the e-mails and take a look at the</p> <p>23 spreadsheet, let me know when you are done, and I</p> <p>24 will ask you some questions about them.</p> <p>25 MR. HUME: The binding of this exhibit</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 115</p> <p>2 was obviously done for ease of presentation,</p> <p>3 right? It was not presented like this originally.</p> <p>4 A. Yes.</p> <p>5 Q. Reviewing this chain of e-mails,</p> <p>6 starting with the earliest e-mail, which is an</p> <p>7 e-mail from you to various people, the subject</p> <p>8 line is: "Delivering other assets to Barclays".</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And is that a reference to this process</p> <p>12 we talked about, the assets over and above the</p> <p>13 repo assets?</p> <p>14 A. That is correct.</p> <p>15 Q. Take a look at the first page of this</p> <p>16 exhibit, the e-mail, page 1, Exhibit 47. At the</p> <p>17 top of the page there is an e-mail from David</p> <p>18 Murgio at Weil to two additional people, V Lewkow</p> <p>19 and R Davis. Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Was it your understanding that</p> <p>22 spreadsheet information about the collateral was</p> <p>23 provided by lawyers for the estate to the lawyers</p> <p>24 for Barclays?</p> <p>25 A. Yes.</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 116</p> <p>2 Q. There is a reference to BarCap</p> <p>3 collateral.xls. Do you see that file?</p> <p>4 A. I do.</p> <p>5 Q. That was the same file that you had sent</p> <p>6 over earlier, right, Exhibit 143A?</p> <p>7 A. Yes.</p> <p>8 Q. If you turn to the fifth page, Bates</p> <p>9 number 5138 are the last four digits, do you see</p> <p>10 that calculation up there?</p> <p>11 A. I do, yes.</p> <p>12 Q. And it is a total of 49.9 billion. Do</p> <p>13 you see that?</p> <p>14 A. I do.</p> <p>15 Q. And that is in the market value column?</p> <p>16 A. I see that.</p> <p>17 Q. And there is four components to that</p> <p>18 total. Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. The first is Fed collateral?</p> <p>21 A. Yes.</p> <p>22 Q. Do you have an understanding of what</p> <p>23 that item is?</p> <p>24 A. Yes.</p> <p>25 Q. What is it?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 117</p> <p>2 A. It is Fed wireable collateral that was</p> <p>3 transferred over, Fed wire being the market</p> <p>4 settlement system for this type of collateral.</p> <p>5 Q. The next line item is DTC074. Do you</p> <p>6 see that?</p> <p>7 A. I do.</p> <p>8 Q. Is that an account or a box at DTC?</p> <p>9 A. That is I think an account at DTC.</p> <p>10 Q. A Lehman account?</p> <p>11 A. Yes.</p> <p>12 Q. The next item is DTC636. Do you see</p> <p>13 that?</p> <p>14 A. I do.</p> <p>15 Q. What is your understanding of what that</p> <p>16 is?</p> <p>17 A. That is a different type of DTC account.</p> <p>18 Q. And in the last line item is "TP</p> <p>19 cashed". What does that stand for?</p> <p>20 A. That is the tri-party cash.</p> <p>21 Q. Was it your understanding on</p> <p>22 Friday September 19 that there was 7 billion</p> <p>23 dollars in cash to be delivered to Barclays?</p> <p>24 A. I understood that \$7 billion of cash had</p> <p>25 been given by -- had been deposited by Barclays</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 118</p> <p>2 with JP Morgan and that it was being held by</p> <p>3 JP Morgan.</p> <p>4 Q. Was it your understanding of -- I guess</p> <p>5 these e-mails are all dated September 20, so was</p> <p>6 it your understanding on September 20, 2008, that</p> <p>7 the total value of the collateral on the cash in</p> <p>8 the transaction was 49.9 billion?</p> <p>9 MR. HUME: Objection, vague and</p> <p>10 ambiguous as to the value.</p> <p>11 A. This was my view of the repo transaction</p> <p>12 on the Thursday night, and it was limited to that,</p> <p>13 just to the repo transaction.</p> <p>14 Q. So the 15c3 cash, for example, would be</p> <p>15 in addition to this?</p> <p>16 A. That is correct, yes, as well as the</p> <p>17 other unencumbered collateral, as well as other</p> <p>18 components to the agreement.</p> <p>19 Q. The other unencumbered collateral, that</p> <p>20 would be the Schedule B collateral?</p> <p>21 A. That is what became Schedule B</p> <p>22 collateral, that is right.</p> <p>23 Q. So that would be added to these items</p> <p>24 here?</p> <p>25 A. That is right.</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 119</p> <p>2 Q. If you go down to page 5139, do you see</p> <p>3 that?</p> <p>4 A. I do.</p> <p>5 Q. There is a column titled "Market value"?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what the source of that</p> <p>8 market value information was in this spreadsheet?</p> <p>9 A. I believe that this was the Lehman price</p> <p>10 market value.</p> <p>11 (Exhibit 144A marked for identification)</p> <p>12 Q. I have handed you a one page document</p> <p>13 entitled Exhibit 144A. Take a moment to look at</p> <p>14 that and let me know when you are done.</p> <p>15 A. Yes.</p> <p>16 Q. Have you seen this document before</p> <p>17 today?</p> <p>18 A. I have not, no.</p> <p>19 Q. Do you remember the information that is</p> <p>20 contained in this document?</p> <p>21 A. I do.</p> <p>22 Q. If you can just go through the</p> <p>23 components, the components I want to talk to you</p> <p>24 about are the component that add up to the total</p> <p>25 securities cash received item. Do you see that?</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 120</p> <p>2 A. Okay, yes.</p> <p>3 Q. If you start with the Fed wire</p> <p>4 securities, that is similar to the Fed collateral</p> <p>5 entry we were discussing earlier, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And the next item is "DTC cash". Do you</p> <p>8 see that?</p> <p>9 A. I do.</p> <p>10 Q. Do you have an understanding as to what</p> <p>11 that is?</p> <p>12 A. DTC securities.</p> <p>13 Q. The next item down "DTC cash .3".</p> <p>14 I assume these are billions?</p> <p>15 A. Yes.</p> <p>16 Q. Do you have an understanding of what</p> <p>17 that line item is?</p> <p>18 A. I assume it is more DTC securities.</p> <p>19 Q. The reference to "Repo cash, 7 billion".</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. We have discussed that before?</p> <p>23 A. That is correct.</p> <p>24 Q. And then it says "Today DTC collateral".</p> <p>25 Do you see that?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 121</p> <p>2 A. I do.</p> <p>3 Q. And that is 390 million. This is an</p> <p>4 e-mail dated as of September 19, 2008. Do you</p> <p>5 have an understanding as to what that means?</p> <p>6 A. I don't know the specifics.</p> <p>7 Q. And that rolled up into 52.19 billion</p> <p>8 total. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Again, this does not include, as far as</p> <p>11 you know, the 15c3 cash, correct?</p> <p>12 A. That is correct.</p> <p>13 Q. Do you know whether this includes</p> <p>14 Schedule B?</p> <p>15 A. I would presume that the "Today DTC</p> <p>16 collateral" includes some of what became the</p> <p>17 Schedule B collateral.</p> <p>18 Q. When you look below the total securities</p> <p>19 cash received there is a repo cash amount. Do you</p> <p>20 see that?</p> <p>21 A. Yes.</p> <p>22 Q. And that is 45 billion?</p> <p>23 A. Yes.</p> <p>24 Q. So the differential between the value of</p> <p>25 the securities and cash received and the repo cash</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 122</p> <p>2 amount is listed as excess collateral there,</p> <p>3 right?</p> <p>4 A. That is right.</p> <p>5 Q. That is \$7 billion?</p> <p>6 A. Yes.</p> <p>7 Q. So that is the excess of market value</p> <p>8 over cash paid for the repo?</p> <p>9 A. That is, you know, what it looks like.</p> <p>10 Q. And this, as far as you can tell, the</p> <p>11 folks who have sent this e-mail around are all</p> <p>12 Barclays folks, right?</p> <p>13 A. Yes.</p> <p>14 Q. Not former Lehman people, is that right?</p> <p>15 A. No.</p> <p>16 Q. And are they also still at Barclays?</p> <p>17 A. I have no idea.</p> <p>18 Q. Do you know any of these names, Gerry</p> <p>19 LaRocca?</p> <p>20 A. I do.</p> <p>21 Q. Does Gerry work with you?</p> <p>22 A. No.</p> <p>23 Q. Not in your department or group?</p> <p>24 A. No.</p> <p>25 Q. Stephen King?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 123</p> <p>2 A. I know Stephen, yes.</p> <p>3 Q. Is he in your group?</p> <p>4 A. No.</p> <p>5 Q. Back in the last quarter of 2008, did</p> <p>6 you work with Gerry or Stephen?</p> <p>7 A. Yes, intermittently. I mean we were not</p> <p>8 in the same group but we worked together on a few</p> <p>9 things, you know.</p> <p>10 (Exhibit 145A marked for identification)</p> <p>11 Q. I have had placed before you a 3-page</p> <p>12 document marked Exhibit 145A.</p> <p>13 A. Yes.</p> <p>14 Q. If you take a moment to look at that</p> <p>15 e-mail chain and let me know when you are done.</p> <p>16 A. Yes.</p> <p>17 Q. You will see the subject line of the</p> <p>18 series of e-mails is "Opening balance sheet". Do</p> <p>19 you see that?</p> <p>20 A. I do.</p> <p>21 Q. This is part of the effort that you had</p> <p>22 testified about before, which was preparing the</p> <p>23 initial opening balance sheet?</p> <p>24 A. That is correct.</p> <p>25 Q. It starts off with an e-mail from Martin</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 124</p> <p>2 Kelly to Robert Azerad, Blackwell and Beldner,</p> <p>3 right. Who was Brett Beldner?</p> <p>4 A. He is an accountant who worked for</p> <p>5 Martin Kelly.</p> <p>6 Q. He was at Lehman, right?</p> <p>7 A. He was.</p> <p>8 Q. Is he now at Barclays?</p> <p>9 A. I don't know.</p> <p>10 Q. You are copied on that e-mail at the</p> <p>11 bottom of page 2, right?</p> <p>12 A. Yes.</p> <p>13 Q. If you go over to page 1 of this</p> <p>14 Exhibit 145A, it is the e-mail at the bottom of</p> <p>15 the page which is an e-mail from you to a group of</p> <p>16 people. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And you have got sort of two items in</p> <p>19 your e-mail, correct?</p> <p>20 MR. HUME: Which e-mail?</p> <p>21 Q. The bottom of page 1. Are you with me,</p> <p>22 Mr. Tonucci?</p> <p>23 A. What are the two items?</p> <p>24 Q. The first item is "I think they have</p> <p>25 ..." and you correct yourself, "42.9 billion of</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 125</p> <p>2 assets and paid net 38 billion of cash." Do you</p> <p>3 see that?</p> <p>4 A. Yes.</p> <p>5 Q. That is one item in your e-mail,</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. And that is your recap of the repo</p> <p>9 situation?</p> <p>10 A. That is correct.</p> <p>11 Q. You have a second item: "Their opening</p> <p>12 balance sheet should also include 1.9 billion of</p> <p>13 box assets". Correct?</p> <p>14 A. Correct.</p> <p>15 Q. What is that a reference to?</p> <p>16 A. The unencumbered collateral.</p> <p>17 Q. Schedule B?</p> <p>18 A. Which became Schedule B.</p> <p>19 Q. I guess there is a third item then, "and</p> <p>20 one billion of cash receivable from the release of</p> <p>21 lock ups." Correct?</p> <p>22 A. That is correct.</p> <p>23 Q. And that is the 15c3?</p> <p>24 A. That is correct.</p> <p>25 Q. And at least on the morning</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 126</p> <p>2 of September 20 those were the sort of three</p> <p>3 components you were thinking of as comprising the</p> <p>4 balance sheet. Correct?</p> <p>5 MR. HUME: Objection, lacks foundation.</p> <p>6 A. Those were the components that I was</p> <p>7 aware of, so I was not the accountant and I was</p> <p>8 not on the negotiation team and I was not aware of</p> <p>9 any other entries that may be being made for</p> <p>10 example on the liability side or for other assets</p> <p>11 over and above these.</p> <p>12 Q. Just on a net basis, the three</p> <p>13 components that you identified at the bottom of</p> <p>14 page 1, there is a net of 4 billion on the repo</p> <p>15 piece, correct?</p> <p>16 A. If you are calculating the 42.9 minus</p> <p>17 the 38.</p> <p>18 Q. Yes.</p> <p>19 A. That is the calculation you are doing?</p> <p>20 Q. That is the calculation. It is actually</p> <p>21 4.9.</p> <p>22 A. That is correct.</p> <p>23 Q. You add to that the 1.9 of boxed assets?</p> <p>24 A. Yes.</p> <p>25 Q. With no offsetting liability against</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 127</p> <p>2 that 1.9?</p> <p>3 MR. HUME: Objection, lacks foundation.</p> <p>4 A. That is not clear to me. I can only</p> <p>5 tell you the asset side that I was aware of.</p> <p>6 Q. So the asset side you have net assets on</p> <p>7 the repo of 4.9, 1.9 on the box assets and then</p> <p>8 a billion on the cash receivable?</p> <p>9 MR. HUME: Objection, vagueness, vague</p> <p>10 and ambiguous.</p> <p>11 MR. TAMBE: Right?</p> <p>12 A. You can read it.</p> <p>13 Q. And that is a total of what, about</p> <p>14 7.9 billion?</p> <p>15 MR. HUME: Objection, lacks foundation.</p> <p>16 You are just asking him to do the maths?</p> <p>17 A. You are just asking me to add up?</p> <p>18 Q. 7.8 billion --</p> <p>19 A. Yes.</p> <p>20 Q. Were you aware of any liabilities that</p> <p>21 offset that 7.8 billion dollars of net assets</p> <p>22 delivered to Barclays?</p> <p>23 A. I knew there were some liabilities.</p> <p>24 Q. What magnitude?</p> <p>25 A. I was not sure but I knew that there</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 128</p> <p>2 were liabilities for compensation and for other</p> <p>3 payments, services and so on that, you know, were</p> <p>4 not part of the numbers that I was putting</p> <p>5 together.</p> <p>6 (Exhibit 146A marked for identification)</p> <p>7 Q. I have handed you a 3-page document</p> <p>8 marked Exhibit 146A, an e-mail chain. Let me know</p> <p>9 when you are done reviewing it.</p> <p>10 A. Yes.</p> <p>11 Q. Do you recognize this as a series of</p> <p>12 e-mails between folks at Lehman about a transfer</p> <p>13 of collateral to BarCap?</p> <p>14 A. Yes.</p> <p>15 Q. And this is a series of e-mails</p> <p>16 dated September 22, 2008. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. And it is early in the morning, right,</p> <p>19 6:00 or 7:00 am?</p> <p>20 A. Yes.</p> <p>21 Q. And is that before the clarification</p> <p>22 letter is signed?</p> <p>23 MR. HUME: Objection, lacks foundation.</p> <p>24 The witness has testified he didn't review it that</p> <p>25 week.</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 129</p> <p>2 A. I can't say.</p> <p>3 Q. Do you recall there being some urgency</p> <p>4 on the morning of September 22 to getting answers</p> <p>5 to this question, "queuing up delivery to BarCap"?</p> <p>6 MR. HUME: Objection, vague.</p> <p>7 A. I don't really know but, you know,</p> <p>8 I would say that everyone was focused on doing</p> <p>9 their job.</p> <p>10 Q. And what was your job that morning?</p> <p>11 A. Well, we were trying to close the</p> <p>12 transaction in an orderly way.</p> <p>13 Q. There is an e-mail at the bottom of page</p> <p>14 1 over to page 2 from Monty Forrest to you and</p> <p>15 Robert Azerad. Do you see that e-mail?</p> <p>16 A. Yes.</p> <p>17 Q. And his first numbered point, which is</p> <p>18 at the bottom of page 1 over on to page 2 states:</p> <p>19 "What was the final agreed upon list (our</p> <p>20 version or the version after Robert took out and</p> <p>21 re-marked Lehman paper.)"</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you understand the reference to</p> <p>25 re-marked Lehman paper?</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 130</p> <p>2 A. Well, just I think it is more relevant</p> <p>3 that he just removed the Lehman paper. There was</p> <p>4 some -- in the original unencumbered list there</p> <p>5 was some securities which were Lehman issued.</p> <p>6 Q. It is not your understanding that there</p> <p>7 was a mark down of Lehman paper by Robert in that</p> <p>8 list?</p> <p>9 A. That is not what it refers to.</p> <p>10 (Exhibit 147A marked for identification)</p> <p>11 Q. I have handed you a 2-page document</p> <p>12 marked Exhibit 147A, an e-mail chain. Please</p> <p>13 review it and let me know when you are done.</p> <p>14 A. Yes.</p> <p>15 Q. And you recognize this as a series of</p> <p>16 e-mails, again dated September 22, 2008?</p> <p>17 A. Yes.</p> <p>18 Q. And these are additional e-mails about</p> <p>19 the financing facility?</p> <p>20 A. Additional e-mails about the securities</p> <p>21 that were transferred over and confirmation of</p> <p>22 those securities.</p> <p>23 Q. On page 2 of this exhibit, the body of</p> <p>24 the e-mail from Jasen Yang to Robert Azerad and</p> <p>25 James Hraska. Do you see that?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 131</p> <p>2 A. Yes.</p> <p>3 Q. And you are seen as a copy on that</p> <p>4 e-mail?</p> <p>5 A. Yes.</p> <p>6 Q. It appears from that e-mail that he is</p> <p>7 sending over to you the BONY valuation of the</p> <p>8 collateral, is that right?</p> <p>9 A. Sending over the BONY file, which</p> <p>10 includes the valuation, but it obviously also</p> <p>11 includes the details around nominal and</p> <p>12 securities.</p> <p>13 Q. There is a reference to BONY market</p> <p>14 value of approximately 45MM. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. He was referring to a 45 billion-dollar</p> <p>17 value, correct?</p> <p>18 A. I assume so.</p> <p>19 Q. You will see on page 1 of the e-mail</p> <p>20 a reference to "fast reconciliation". Do you see</p> <p>21 that?</p> <p>22 A. I do.</p> <p>23 Q. Was that sort of the beginning of the</p> <p>24 reconciliation process you talked about before?</p> <p>25 A. We had tried to do an initial</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 132</p> <p>2 reconciliation on the Friday. This was</p> <p>3 a subsequent reconciliation and at a more detailed</p> <p>4 level. Jasen had identified what he saw as some</p> <p>5 discrepancies, and we were trying to resolve</p> <p>6 whether those discrepancies existed, principally</p> <p>7 in the securities that were transferred over and</p> <p>8 the nominal value of those securities.</p> <p>9 (Break from 10:37 to 10:55 am.)</p> <p>10 MR. TAMBE: Mr. Tonucci, I have placed</p> <p>11 before you a document marked Exhibit 126. Can you</p> <p>12 take a moment to look at the e-mail chain and let</p> <p>13 me know when you are done.</p> <p>14 A. Yes.</p> <p>15 Q. Starting with the e-mail at the bottom</p> <p>16 of the page, it is from Gerry Reilly to Ian Lowitt</p> <p>17 and Michael Gelband. You are copied on it. Do</p> <p>18 you see that?</p> <p>19 A. I do.</p> <p>20 Q. There are three numbered items in that</p> <p>21 e-mail. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. The third item reads: "Not clear on the</p> <p>24 amount of blocked discount or how we make it</p> <p>25 happen." Do you see that?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 133</p> <p>2 A. Yes.</p> <p>3 Q. And you understand that to be</p> <p>4 a reference to the 5 billion-dollar discount that</p> <p>5 we talked about earlier?</p> <p>6 MR. HUME: Objection, lacks foundation.</p> <p>7 A. I understand it to be a reference to the</p> <p>8 discount on purchase, so I would have linked it to</p> <p>9 that \$5 billion.</p> <p>10 Q. Then the next sentence reads:</p> <p>11 "Defaulting on repo could be the best as</p> <p>12 discounts could be taken from the haircut."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Do you remember discussing with anyone</p> <p>16 at Lehman defaulting on the repo as a way of</p> <p>17 providing the discount to Barclays?</p> <p>18 A. Yes.</p> <p>19 Q. With whom did you discuss that?</p> <p>20 A. I think it was with Ian and with Gerry,</p> <p>21 perhaps Martin Kelly as well.</p> <p>22 Q. And then in Gerry's e-mail at the bottom</p> <p>23 of this e-mail chain on exhibit 126 he says:</p> <p>24 "If not that then we need to give business an</p> <p>25 allocation of block discount so they can mark down the</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 134</p> <p>2 books tonight."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall if that ever happened,</p> <p>6 whether there was an allocation of a block</p> <p>7 discount?</p> <p>8 A. I don't know.</p> <p>9 Q. Does the phrase "block discount" have</p> <p>10 any meaning to you?</p> <p>11 A. Not really.</p> <p>12 Q. Other than what we have talked about</p> <p>13 here?</p> <p>14 A. Other than in this context.</p> <p>15 Q. The next e-mail up, from Ian Lowitt to</p> <p>16 Gerry Reilly and Michael Gelband talks about</p> <p>17 "shrinking down matched book". Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Do you understand that to be a reference</p> <p>20 to what we talked about before, about the matched</p> <p>21 book being shrunk down to zero?</p> <p>22 A. Yes.</p> <p>23 Q. The first bullet point in Gerry Reilly's</p> <p>24 e-mail at the bottom of the page talks about the</p> <p>25 option rate book. Do you see that?</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 135</p> <p>2 A. Yes.</p> <p>3 Q. Was it your understanding during this</p> <p>4 week of 15 September that there were assets that</p> <p>5 Barclays was picking and choosing as to which</p> <p>6 assets it was prepared to purchase?</p> <p>7 A. That is right.</p> <p>8 MR. HUME: Objection.</p> <p>9 A. That was my understanding.</p> <p>10 Q. And from whom did you get that</p> <p>11 understanding?</p> <p>12 A. I can't recall but I understood that</p> <p>13 they were not going to be buying all the assets.</p> <p>14 Q. Was it your understanding that there was</p> <p>15 a change or an evolution in the transaction where</p> <p>16 it went from being all assets to only some assets?</p> <p>17 A. No, I understood that it was never all</p> <p>18 assets.</p> <p>19 Q. Did you have an understanding as to who</p> <p>20 was making the decisions as to which assets it</p> <p>21 would be?</p> <p>22 A. It was -- I think it was the negotiation</p> <p>23 team, Barclays and Lehman negotiation team.</p> <p>24 Q. Was it your understanding that it was</p> <p>25 Barclays making the decisions?</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 136</p> <p>2 A. Well, they were the buyers so they would</p> <p>3 by extension have the final decision on what</p> <p>4 assets are bought.</p> <p>5 Q. I have placed before you a document</p> <p>6 marked Exhibit 127. It is another branch in the</p> <p>7 e-mail chain that we were looking at before in</p> <p>8 126. Let me know when you are done with the</p> <p>9 document.</p> <p>10 A. Yes.</p> <p>11 Q. So it starts with the same Gerry Reilly</p> <p>12 e-mail at the bottom but there is a different</p> <p>13 e-mail at the top. At the top of the document</p> <p>14 there is an e-mail from Eric Felder to various</p> <p>15 e-mail at Lehman. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And Eric says:</p> <p>18 "The Barclays guys chose the assets. We did not</p> <p>19 have anything to do with it."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And that was consistent with your</p> <p>23 understanding of how the assets were picked --</p> <p>24 MR. HUME: Objection to the lack of</p> <p>25 foundation. Mr. Tonucci is not on that e-mail.</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 137</p> <p>2 A. I mean, I have only seen this e-mail in</p> <p>3 the deposition process and I have not spoken to</p> <p>4 Eric and I was not part of the negotiation team.</p> <p>5 I am not sure what Eric was seeing. Eric was also</p> <p>6 not -- you know, he was running the credit book so</p> <p>7 I don't know if he would have seen all parts of</p> <p>8 this process.</p> <p>9 Q. Basically, one way or the other, you</p> <p>10 don't know whether what Eric says here is right?</p> <p>11 A. That is right.</p> <p>12 (Exhibit 148A marked for identification)</p> <p>13 Q. I have handed you a 2-page document</p> <p>14 marked Exhibit 148A. Let me know when you are</p> <p>15 done with it.</p> <p>16 A. Okay.</p> <p>17 Q. In the top e-mail on this chain of</p> <p>18 e-mails from Gerry Reilly to Martin Kelly and</p> <p>19 Daniel Flores, I want you to focus on that e-mail.</p> <p>20 Do you have it there?</p> <p>21 A. I do.</p> <p>22 Q. You are not shown as a copy on any of</p> <p>23 these e-mails. Can I ask you about a phrase that</p> <p>24 is used in this e-mail. The third sentence of</p> <p>25 that e-mail, Gerry Reilly's e-mail states that:</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 138</p> <p>2 "Purchase will be at a fixed discount on the</p> <p>3 assets that remain to reflect the bulk size of the</p> <p>4 purchase".</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Did anyone ever describe for you the</p> <p>8 reason for the discount being the bulk size of the</p> <p>9 purchase?</p> <p>10 A. I don't recall that, no.</p> <p>11 Q. Does that phrase have any meaning to</p> <p>12 you?</p> <p>13 A. I have not seen it before.</p> <p>14 Q. Then the next sentence in Gerry Reilly's</p> <p>15 e-mail starts off by saying: "We can track our</p> <p>16 PL..." Is that profit and loss?</p> <p>17 A. Yes.</p> <p>18 Q. "... by assets category, which gives</p> <p>19 some indication of how much we have moved the</p> <p>20 marks". Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you understand the reference to</p> <p>23 "moving the marks"?</p> <p>24 A. Yes. Can I give you just a bit of</p> <p>25 context, because I think that you are sort of</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 139</p> <p>2 misunderstanding some of this. Post Lehman, even</p> <p>3 pre the Lehman filing on the weekend of</p> <p>4 12/13/14th, there was a tremendous amount of price</p> <p>5 volatility and tremendous amount of uncertainty in</p> <p>6 sort of the traded price of a lot of securities,</p> <p>7 even those which were exchange traded, and</p> <p>8 therefore there was more visibility on -- we were</p> <p>9 experiencing a huge amount of volatility. The</p> <p>10 process of re-marking, that was something that</p> <p>11 would typically be conducted on a daily basis and</p> <p>12 was conducted by thousands of traders, so it was</p> <p>13 not as though there was one person with a giant</p> <p>14 brain sat at the centre of this re-marking process</p> <p>15 who had understanding or an ability to re-mark all</p> <p>16 of these assets. It really was a very distributed</p> <p>17 process which involved many, many people, because</p> <p>18 they were responsible for their trading books and</p> <p>19 for the risks on those trading books, and had the</p> <p>20 best understanding of the securities.</p> <p>21 So on any given day there was going to</p> <p>22 be a lot of price volatility and the movement in</p> <p>23 the marks was often just a function of market</p> <p>24 price volatility. It may also be a function of</p> <p>25 actual trading activity, but I would say that in</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 140</p> <p>2 this week the amount of trading activity for these</p> <p>3 particular securities and for these traders was</p> <p>4 limited, so really it is a matter of sort of</p> <p>5 interpretation of where the market is.</p> <p>6 You have to add to that the fact that</p> <p>7 the holding company had filed and so the coverage</p> <p>8 of the desks was also impaired. I don't think</p> <p>9 that there would be every trader turning up and</p> <p>10 re-marking his book. So there was great</p> <p>11 difficulty in just creating the P&L and in being</p> <p>12 able to track the movements. So that sort of</p> <p>13 added to the complexity here.</p> <p>14 So my interpretation here is that the</p> <p>15 amount that we have moved the marks is really just</p> <p>16 a reference to the traders re-marking their books</p> <p>17 because of this, because of what is being observed</p> <p>18 in the market, and it probably was the most</p> <p>19 volatile week in the market in the last nearly</p> <p>20 100 years. So very, very difficult, very</p> <p>21 difficult process, and we were not getting good</p> <p>22 P&L's on a daily basis as a result. It was much</p> <p>23 more complicated than was typically the case, and</p> <p>24 on a typical day the process was complicated, so</p> <p>25 this was really extraordinarily difficult to</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 141</p> <p>2 track, to track assets, the asset position and to</p> <p>3 track valuations.</p> <p>4 Q. In the week of September 15 you did not</p> <p>5 do any of the marking of the prices, right?</p> <p>6 A. Absolutely not.</p> <p>7 Q. That is not something you do?</p> <p>8 A. No.</p> <p>9 Q. You don't know specifically what traders</p> <p>10 marked down what prices for what reason, correct?</p> <p>11 A. No.</p> <p>12 Q. You don't know if the marking down was</p> <p>13 pursuant to price movements in the market or</p> <p>14 because they were allocated a block discount?</p> <p>15 A. I don't know with certainty, but you did</p> <p>16 ask me for my interpretation of this and my</p> <p>17 interpretation is that it is going to be</p> <p>18 predominantly because of the volatility in</p> <p>19 valuations in the market.</p> <p>20 Q. Okay, and you don't know whether that is</p> <p>21 because they were allocated a block discount to</p> <p>22 mark down their books?</p> <p>23 A. I am saying that it is not because of</p> <p>24 the allocation of a block discount. My</p> <p>25 interpretation of this is that it was because of</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 142</p> <p>2 the market price movements.</p> <p>3 Q. I have handed you a document marked as</p> <p>4 Exhibit 71B. It is an e-mail exchange between</p> <p>5 yourself and Alastair Blackwell. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. It is on Friday, September 19, 2008. Do</p> <p>8 you see that?</p> <p>9 A. Yes.</p> <p>10 Q. At the top of the e-mail Alastair asks</p> <p>11 you: "Putting the repo into default is my</p> <p>12 conversion?" Do you see that?</p> <p>13 A. Um hum.</p> <p>14 Q. Do you have a recollection of having</p> <p>15 a discussion with Alastair about putting the repo</p> <p>16 into default on Friday, September 19?</p> <p>17 A. I don't, no.</p> <p>18 Q. Any understanding of the phrase "my</p> <p>19 conversion", what he meant by that?</p> <p>20 A. My interpretation would be that his area</p> <p>21 would have to rebook the repo, convert the repo</p> <p>22 into a sale transaction.</p> <p>23 Q. And your understanding was that</p> <p>24 a default on the repo really converted what was a</p> <p>25 two-leg transaction; the repurchase leg would go</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 143</p> <p>2 away and there would effectively be a sale of the</p> <p>3 asset?</p> <p>4 MR. HUME: Objection.</p> <p>5 A. That is correct. It would become</p> <p>6 a sale.</p> <p>7 (Exhibit 149A marked for identification)</p> <p>8 Q. I have handed you a 2-page document</p> <p>9 marked Exhibit 149A. Let me know when you are</p> <p>10 done reviewing that document.</p> <p>11 A. Yes.</p> <p>12 Q. Have you ever seen this document before</p> <p>13 today?</p> <p>14 A. No.</p> <p>15 Q. You know who Bob Diamond is, right?</p> <p>16 A. Yes.</p> <p>17 Q. Who is he?</p> <p>18 A. He is the President of Barclays.</p> <p>19 Q. Do you know who Michael Klein is?</p> <p>20 A. Yes.</p> <p>21 Q. Who is Michael Klein?</p> <p>22 A. He is someone who was involved in the</p> <p>23 transaction.</p> <p>24 Q. Is he someone that you dealt with during</p> <p>25 that week of September 15?</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 144</p> <p>2 A. Yes, I spoke to him. I dealt with him</p> <p>3 you know, just through that week. I don't think I</p> <p>4 have seen him since then.</p> <p>5 Q. Describe your interactions with</p> <p>6 Mr. Klein during that week. What were you</p> <p>7 speaking with him about?</p> <p>8 A. Predominantly it was clarification of</p> <p>9 the assets, so Michael was asking for various</p> <p>10 points, just details of the sort of asset</p> <p>11 schedules and some of the other transfers. That</p> <p>12 is all I can really recall.</p> <p>13 Q. Was he part of the conversations on</p> <p>14 Friday, September 19, about locating additional</p> <p>15 assets and value for Barclays?</p> <p>16 A. I didn't speak to him on that, sorry, I</p> <p>17 don't know.</p> <p>18 Q. In his e-mail to Bob Diamond on</p> <p>19 Saturday, September 20, 2008, Mike says: "Great</p> <p>20 day. We clawed back 3 billion more of value of</p> <p>21 the transaction". Do you see that?</p> <p>22 A. I do see that.</p> <p>23 Q. Any understanding as to what he is</p> <p>24 referring to in the 3 billion more of value?</p> <p>25 MR. HUME: Objection, calls for</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 145</p> <p>2 speculation.</p> <p>3 A. I don't know what would go into that</p> <p>4 specifically.</p> <p>5 Q. Was it your understanding on Friday or</p> <p>6 Saturday of that week that Lehman had provided an</p> <p>7 additional \$3 billion of value to Barclays?</p> <p>8 MR. HUME: Objection, lacks foundation.</p> <p>9 Witness has testified he was not negotiating the</p> <p>10 economics of the deal.</p> <p>11 A. I can't really answer that, I don't</p> <p>12 know.</p> <p>13 Q. But we have talked about a couple of</p> <p>14 items of additional value on Friday, September 19,</p> <p>15 right?</p> <p>16 A. We have, but we have also talked about</p> <p>17 the price volatility and the lack of certainty</p> <p>18 around the actual assets that were being</p> <p>19 transferred, and just the difficulty in</p> <p>20 establishing values. So I mean I wouldn't sort</p> <p>21 of, you know, I wouldn't sort of describe this as</p> <p>22 just additive to the original transaction. It was</p> <p>23 clearly changing.</p> <p>24 Q. And among the items that were added was</p> <p>25 1.9 billion in Schedule B, is that right?</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 190</p> <p>2 MR. HUME: He is not qualified to</p> <p>3 articulate what is legal advice and it is</p> <p>4 privileged.</p> <p>5 Q. Fine. Let me ask you, did you obtain</p> <p>6 any advice from Mr. Willoughby?</p> <p>7 MR. HUME: Objection. Don't answer.</p> <p>8 Q. I am not asking for the substance of any</p> <p>9 advice I just want to know did Mr. Willoughby</p> <p>10 respond and provide you with any advice following</p> <p>11 that discussion that you had?</p> <p>12 MR. HUME: Object to the</p> <p>13 characterization of whether there was</p> <p>14 a communication. You can ask whether there was</p> <p>15 a communication from Mr. Willoughby.</p> <p>16 A. I don't recall.</p> <p>17 Q. You don't recall receiving any</p> <p>18 communication from Mr. Willoughby in response to</p> <p>19 the discussion that you had in late September?</p> <p>20 A. That is right.</p> <p>21 Q. And you don't recall following up with</p> <p>22 Mr. Willoughby concerning that communication?</p> <p>23 A. That is right.</p> <p>24 Q. So as far as you recall, you have never</p> <p>25 touched this subject since that one discussion you</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 191</p> <p>2 had with Mr. Willoughby in late September, 2008?</p> <p>3 A. Certainly not that -- I don't recall</p> <p>4 speaking to Scott Willoughby and I would say that</p> <p>5 my involvement in this transaction subsequent to</p> <p>6 that was minimal.</p> <p>7 Q. And you don't recall discussing this,</p> <p>8 this I mean in the OCC positions and Barclays'</p> <p>9 entitlement since September 2008 with anyone?</p> <p>10 A. No, I don't believe I have discussed</p> <p>11 with anyone.</p> <p>12 Q. You testified earlier about unencumbered</p> <p>13 assets, and specifically I want to ask you about</p> <p>14 Schedule B that you mentioned. Where were the</p> <p>15 assets that are listed on Schedule B physically</p> <p>16 located?</p> <p>17 A. There were very many versions of</p> <p>18 Schedule B so you are going to have to be more</p> <p>19 specific.</p> <p>20 Q. I am just now looking only for your</p> <p>21 understanding as to where they were physically</p> <p>22 custodied. If it is more than one place or</p> <p>23 changed over time, let me know?</p> <p>24 A. That is what I am saying, it was more</p> <p>25 than one place and it changed over time.</p>
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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 192</p> <p>2 Q. What were the different places where</p> <p>3 those assets were --</p> <p>4 A. DTCC, JP Morgan, Euroclear. I can't</p> <p>5 remember the name of the Canadian depository, so</p> <p>6 those are the ones that I remember.</p> <p>7 Q. At any time was Schedule B limited to</p> <p>8 the unencumbered assets at DTC?</p> <p>9 A. Not that I am aware of.</p> <p>10 Q. I will show you a document we will mark</p> <p>11 as 164A.</p> <p>12 (Exhibit 164A marked for identification).</p> <p>13 If we start at the bottom, you will see there is</p> <p>14 an e-mail that then gets sent to you on 18 September, and</p> <p>15 then you forward to Mr. Azerad. Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. And the chain starts with what is called</p> <p>18 a box summary. Can you tell me what the box</p> <p>19 summary is?</p> <p>20 A. Yes, it is the securities in possession,</p> <p>21 in the clearance box.</p> <p>22 Q. When you say "clearance box", is that</p> <p>23 the clearance box at DTC?</p> <p>24 A. No, it could mean any number of</p> <p>25 custodial or depository arrangements.</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 193</p> <p>2 Q. Then you will see Mr. Azerad's e-mail</p> <p>3 says: "FYI, 3.2 billion at risk." Can you explain</p> <p>4 what "3.2 billion at risk" means?</p> <p>5 A. I don't think I can.</p> <p>6 Q. Did you have an understanding at the</p> <p>7 time that you received this e-mail?</p> <p>8 A. I am assuming the 3.2 billion is the</p> <p>9 "stays at LBI" position. I am not too sure what</p> <p>10 the "at risk" means.</p> <p>11 MR. HUME: Don't speculate.</p> <p>12 Q. In your e-mail you say: "That seems very</p> <p>13 high. What are the assets they need to sell?"</p> <p>14 Does that help you to understand what you were</p> <p>15 hearing here and what you were following up with?</p> <p>16 A. Not really. I mean, there was a lot</p> <p>17 going on, and I am sure you have seen that there</p> <p>18 were a lot of e-mails that I was getting, so</p> <p>19 responses like that could be quite open, just</p> <p>20 because I don't really know what was going on and</p> <p>21 I was trying to get information from others.</p> <p>22 Q. What was the Sparrow report?</p> <p>23 A. Charlie Sparrow was the mortgage trader,</p> <p>24 he was the head of the mortgage desk, so I think</p> <p>25 it was his report of positions.</p>

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<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 202</p> <p>2 the 800 million that had been transferred on the</p> <p>3 Friday?</p> <p>4 A. I don't. I would assume so.</p> <p>5 MR. HUME: Don't assume. Don't</p> <p>6 speculate.</p> <p>7 Q. The next is: "We have 746 million in</p> <p>8 074." Do you recognize that as a DTC box?</p> <p>9 A. I do.</p> <p>10 Q. You will see number 4 says: "We have</p> <p>11 identified another 300 million of mortgages in</p> <p>12 636." Do you know what 636 is a reference to?</p> <p>13 A. Another DTC box or account.</p> <p>14 Q. And Mr. Forrest says: "That is a total</p> <p>15 of 2.181 billion." Do you see that, sir?</p> <p>16 A. Yes.</p> <p>17 Q. Was there a specific target that people</p> <p>18 were shooting for, a specific total people were</p> <p>19 trying to get to?</p> <p>20 A. Not really.</p> <p>21 Q. So people were kind of keeping score of</p> <p>22 what they found but there was not any number that</p> <p>23 you had in mind as a target that you needed to get</p> <p>24 to?</p> <p>25 MR. HUME: Objection to the form.</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 203</p> <p>2 A. Not really. I mean I think, as Ian</p> <p>3 says, it is more important just to be accurate.</p> <p>4 Q. You had mentioned that you had heard I</p> <p>5 believe on the Friday that there was a need for</p> <p>6 additional collateral in order for the transaction</p> <p>7 to close; that was something that Mr. Lowitt told</p> <p>8 you?</p> <p>9 A. Um hum.</p> <p>10 Q. And he reiterated that a number of times</p> <p>11 during the day?</p> <p>12 A. Yes.</p> <p>13 Q. Did he tell you how much additional</p> <p>14 collateral would be needed to make the transaction</p> <p>15 close?</p> <p>16 A. I thought -- no, I don't remember the</p> <p>17 total. It was more than 2 billion.</p> <p>18 Q. Was there a number that he gave you and</p> <p>19 you don't remember what that is now?</p> <p>20 A. I don't remember what it was. I don't</p> <p>21 remember if he gave me a number and I don't</p> <p>22 remember what it was.</p> <p>23 Q. Over the course of the next couple of</p> <p>24 days, the Saturday and the Sunday, did you hear of</p> <p>25 a target, a number that was needed in order to</p>
Page 204	Page 205
<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 204</p> <p>2 close the transaction?</p> <p>3 A. I think we had gone to the bankruptcy</p> <p>4 court on Friday with the unencumbered collateral</p> <p>5 at 1.9 billion, so that was our initial estimate,</p> <p>6 and then a further billion or so in the 15c3</p> <p>7 reserve account, so that would give nearly</p> <p>8 \$3 billion. I think that that is what everyone</p> <p>9 was expecting the value of the unencumbered</p> <p>10 collateral plus the 15c3 to be.</p> <p>11 Q. When you say "we went to the bankruptcy</p> <p>12 court", you are describing what everybody's</p> <p>13 expectation was at the time everybody went down to</p> <p>14 the bankruptcy court hearing?</p> <p>15 MR. HUME: Objection to the form,</p> <p>16 calling for speculation about what other people's</p> <p>17 expectations were.</p> <p>18 Q. That certainly was your understanding?</p> <p>19 A. It was my understanding.</p> <p>20 Q. Did you attend the hearing before the</p> <p>21 bankruptcy court?</p> <p>22 A. I did not.</p> <p>23 Q. Did you hear from anybody who did</p> <p>24 attend?</p> <p>25 A. Yes.</p>	<p>1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 205</p> <p>2 Q. Who did you hear from?</p> <p>3 A. From Chris O'Meara.</p> <p>4 Q. Who was Chris O'Meara?</p> <p>5 A. He was at Lehman Brothers. He had been</p> <p>6 head of risk.</p> <p>7 Q. What did Chris O'Meara tell you about</p> <p>8 the hearing?</p> <p>9 A. That it was long and seemed to have gone</p> <p>10 well, and that the court had approved the sale.</p> <p>11 Q. Did he tell you anything else?</p> <p>12 A. No.</p> <p>13 Q. Did he tell you anything about any</p> <p>14 proceedings that had happened in the course of the</p> <p>15 hearing?</p> <p>16 A. No, he kept it to a minimum.</p> <p>17 Q. Did you hear from anyone else other than</p> <p>18 Chris O'Meara about the hearing?</p> <p>19 A. I did not.</p> <p>20 Q. I will show you a document we will mark</p> <p>21 as Exhibit 169A.</p> <p>22 (Exhibit 169A marked for identification).</p> <p>23 The subject of these e-mails is "PL on 9/18". Do</p> <p>24 you have an understanding what "PL" refers to?</p> <p>25 A. I am not sure here. I am not</p>

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555(JMP)
8 HOLDINGS, INC., et al, (Jointly Administered)
9 Debtors.

10 -----x

11
12 DEPOSITION OF CONOR P. TULLY

13 New York, New York

14 February 10, 2010

15
16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

18 JOB NO. 27496
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20
21
22
23
24
25

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<p>1 TULLY</p> <p>2 THE VIDEOGRAPHER: This begins tape</p> <p>3 labeled number one of the videotape</p> <p>4 deposition of Conor Tully in the matter in</p> <p>5 In re: Lehman Brothers Holdings</p> <p>6 Incorporated, et al., in the United States</p> <p>7 Bankruptcy Court for the Southern District</p> <p>8 of New York, case number 0813555.</p> <p>9 This deposition is being held at 575</p> <p>10 Lexington Avenue in New York, New York on</p> <p>11 February 10, 2010 at approximately 9:37 a.m.</p> <p>12 My name is Matthew Smith for TSG</p> <p>13 Reporting Incorporated and I am the legal</p> <p>14 video specialist. The court reporter is</p> <p>15 Mary Bowman in association with TSG</p> <p>16 Reporting.</p> <p>17 Will counsel please introduce yourself</p> <p>18 for the record.</p> <p>19 MR. STERN: Jack Stern of Boies,</p> <p>20 Schiller & Flexner for Barclays Capital and</p> <p>21 with me today is Camille Oberkamp.</p> <p>22 MS. TAGGART: Erica Taggart for the</p> <p>23 committee and the witness with Quinn,</p> <p>24 Emanuel, Urquhart, Oliver & Hedges, and I</p> <p>25 have Tyler Whitmore with me.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 TULLY</p> <p>2 MS. TABATABAI: Fara Tabatabai from</p> <p>3 Hughes, Hubbard & Reed.</p> <p>4 MS. DEL MEDICO: Jennifer Del Medico,</p> <p>5 Jones Day, appearing for Lehman.</p> <p>6 CONOR TULLY,</p> <p>7 called as a witness by the parties,</p> <p>8 having been duly sworn, testified as follows:</p> <p>9 EXAMINATION BY</p> <p>10 BY MR. STERN:</p> <p>11 Q. Good morning, Mr. Tully.</p> <p>12 A. Good morning.</p> <p>13 Q. Thanks for joining us in the midst of</p> <p>14 a blizzard. We appreciate that.</p> <p>15 To start, can you summarize for us</p> <p>16 your educational background starting with</p> <p>17 college.</p> <p>18 A. Sure. I graduated from Manhattan</p> <p>19 College with a bachelors degree in accountancy.</p> <p>20 I don't have a master's in business.</p> <p>21 Q. Could you summarize for us your</p> <p>22 professional experience after college?</p> <p>23 A. Certainly. After college, I started</p> <p>24 with the audit practice of Ernst & Young LLP in</p> <p>25 New York, worked in that practice for</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 8	Page 9
<p>1 TULLY</p> <p>2 approximately four years auditing multinational</p> <p>3 corporations. At that time, I made, moved to</p> <p>4 the restructuring group of Ernst & Young,</p> <p>5 various names, restructuring, financial advisory</p> <p>6 services, et cetera. I spent up until 2004 in</p> <p>7 that group, so approximately six years. At</p> <p>8 which time I moved to FTI Consulting, my current</p> <p>9 employer, which I have been with for about five</p> <p>10 years, five and a half years.</p> <p>11 Q. And what is your position at FTI?</p> <p>12 A. I am a senior managing director.</p> <p>13 Q. Is that the position that you held in</p> <p>14 September of 2008 at the time that the Lehman</p> <p>15 bankruptcy cases began?</p> <p>16 A. No. I was a managing director at that</p> <p>17 point.</p> <p>18 Q. And when did you become a senior</p> <p>19 managing director?</p> <p>20 A. About 13 months ago.</p> <p>21 Q. What is FTI's role in connection with</p> <p>22 the Lehman bankruptcy case?</p> <p>23 A. We are the financial advisor to the</p> <p>24 official committee of unsecured creditors in</p> <p>25 LBHI.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 TULLY</p> <p>2 Q. When was FTI first engaged for that</p> <p>3 assignment?</p> <p>4 A. We were engaged I believe it was</p> <p>5 Wednesday, September 17, 2008.</p> <p>6 Q. Can you tell me the primary people at</p> <p>7 FTI who have worked on this assignment?</p> <p>8 A. Sure. Michael Eisenband who is the</p> <p>9 leader of my group. I work in the creditor</p> <p>10 rights group. He is involved. Sam -- he is a</p> <p>11 senior managing director. Samuel Star, also in</p> <p>12 my group, senior managing director. Rob</p> <p>13 Daresky, he does more financial services type</p> <p>14 work, but restructuring as well and he is a</p> <p>15 senior managing director.</p> <p>16 John Sirus, he is a managing director</p> <p>17 specializes in derivative contracts, financial</p> <p>18 institutions. Christopher Dean, he is a</p> <p>19 director, he works on our field work, basically</p> <p>20 works under my direction Sam Star's direction.</p> <p>21 There are people in our technology</p> <p>22 group that are involved, I'm not too involved</p> <p>23 with what they do. But there is a number of</p> <p>24 people. There is many others in the engagement.</p> <p>25 I don't know how many more you would like me to</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 TULLY</p> <p>2 add.</p> <p>3 Q. That's fine. That's fine.</p> <p>4 I have handed you a document that we</p> <p>5 previously marked as Exhibit 463B. Do you have</p> <p>6 that in front of you?</p> <p>7 A. I do.</p> <p>8 Q. Are you familiar with this document?</p> <p>9 A. I am.</p> <p>10 Q. Is this a document that you reviewed</p> <p>11 in preparing for today's deposition?</p> <p>12 A. Yes.</p> <p>13 Q. Can you tell us what this is?</p> <p>14 A. This is an e-mail written to the</p> <p>15 people at Lehman Brothers and as well as I guess</p> <p>16 copied to Bill Fox of Alvarez & Marsal seeking</p> <p>17 to confirm and I guess enhance my understanding</p> <p>18 of a conversation that we had on October 3,</p> <p>19 Friday October 3, 2008 concerning my</p> <p>20 understanding of the JP Morgan Chase</p> <p>21 transaction, transactions.</p> <p>22 Q. Prior to writing this e-mail, on how</p> <p>23 many occasions had you met with people from</p> <p>24 Alvarez or Lehman concerning either the Barclays</p> <p>25 sale transaction or matters involving JPM Chase?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 TULLY</p> <p>2 A. I'd say a handful of times. It is</p> <p>3 hard to tell you the exact number. If I had to</p> <p>4 venture a guess, I'd say four, maybe four</p> <p>5 inclusive of the 3rd.</p> <p>6 Q. Four inclusive of the October 3</p> <p>7 meeting?</p> <p>8 A. Yeah, that's my recollection.</p> <p>9 Q. What subjects did you discuss with</p> <p>10 Alvarez and Lehman in those various meetings to</p> <p>11 the best of your recollection?</p> <p>12 A. In the first meeting, as would be</p> <p>13 typical, we kind of, in an introduction to</p> <p>14 Alvarez, gained an understanding of their role,</p> <p>15 their knowledge, their game plan, their work</p> <p>16 streams, the staffing of the engagement, just a</p> <p>17 general understanding of what they had to work</p> <p>18 with, and figure out how to, we could work</p> <p>19 together in this case to a common goal of</p> <p>20 maximizing the value for the unsecured</p> <p>21 creditors.</p> <p>22 Q. Do you recall whether that initial</p> <p>23 meeting with Alvarez occurred before or after</p> <p>24 the closing of Barclays sale transaction on</p> <p>25 September 22?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 TULLY</p> <p>2 A. It was after the initial one that I</p> <p>3 was participating in. It was, I believe, the</p> <p>4 24th.</p> <p>5 Q. September 24?</p> <p>6 A. Correct.</p> <p>7 Q. And who participated in that September</p> <p>8 24 meeting to the best of your recollection?</p> <p>9 A. John Suckow was the person we met with</p> <p>10 from A&M. There may have been one or two other</p> <p>11 people from A&M. I can't really recall exactly.</p> <p>12 On our side from FTI, I believe it was</p> <p>13 myself, Sam Star, perhaps Michael Eisenband, I</p> <p>14 don't recall, and maybe one or two other more</p> <p>15 junior staff. I don't particularly recall right</p> <p>16 now.</p> <p>17 From Houlihan's side, I know Ann</p> <p>18 Miller was there, and maybe someone more senior</p> <p>19 than her, I don't recall. I think it was</p> <p>20 probably Michael Fazio. Maybe one other person</p> <p>21 from Houlihan, I don't know. Maybe -- oh, it</p> <p>22 was Michael Livanos, Mike Livanos was there.</p> <p>23 Q. Aside from the general introduction,</p> <p>24 what subjects were discussed or identified for</p> <p>25 follow up at that initial meeting?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 TULLY</p> <p>2 A. One of the burning platforms they had</p> <p>3 on their hands was the fact that they had just a</p> <p>4 handful of legacy Lehman people left. My</p> <p>5 understanding of the transaction was, in North</p> <p>6 America anyhow, substantially all of the legacy</p> <p>7 Lehman Brothers employees were retained by</p> <p>8 Barclays as part of the transaction.</p> <p>9 The people that were left were the</p> <p>10 former management who I guess they were probably</p> <p>11 not destined to be with this legacy Lehman</p> <p>12 Brothers wind-down entity long term. There were</p> <p>13 people that operated the aircraft. There were</p> <p>14 people who were in charge of the services,</p> <p>15 building services that kind of thing, coffee</p> <p>16 and --</p> <p>17 Q. Let me see if I can abbreviate this a</p> <p>18 bit. Was there anything discussed at that</p> <p>19 initial meeting relating to the components of</p> <p>20 the Barclays sale transaction; and by that I</p> <p>21 mean, assets that were purchased, liabilities</p> <p>22 that were assumed, or any other aspect of the</p> <p>23 sale transaction?</p> <p>24 A. I don't believe we directly spoke</p> <p>25 about the sale transaction. Really, the thrust</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

TULLY

of Alvarez's function was really to kind of figure out what was left, how to monetize that. So you could say indirectly, it was more what was left, not what was sold that was the focus of the meeting. It wasn't -- to my knowledge, I don't think that John Suchow was very involved in the transaction, if at all.

Q. After initial meeting, at some point did you have a meeting with Alvarez or people from Lehman in which there was a discussion concerning aspects of the sale transaction?

A. It is hard to say. I mean, the sale transaction, just so you -- we didn't really get into the role of Houlihan and the role of FTI, but they were very bifurcated.

Our role was kind of the operations wind-down, the IT, looking at the retention plan, sort of bankruptcy administration type roles, and then we also got, were getting involved -- got involved in certain work streams like real estate and derivatives, et cetera.

Houlihan's role was transactions, anything and everything transactions. So they were charged with reviewing the Barclays

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transaction or involved to some degree, you know, reviewing certain major asset sales. There was something called R3 that was being sold around that time. The transaction may have been in the works previously and they were vetting it from the committee's perspective to figure out if it still made sense.

So to answer your question, I mean maybe there were certain discussions that, you know, where we had some talk of the transaction. But at that time, the transaction was the transaction and it didn't really matter to me what it was.

Q. At some point after this initial meeting, did you have any discussions with Alvarez or former Lehman executives concerning Barclays' replacement of the Fed repo?

A. Yes, I believe that was the subject of this e-mail. That came up in the context of trying to understand JP Morgan's role in this whole situation. There was some discussion of the fact that, it was said in this e-mail, that there was a Fed repo that Barclays stepped into or partially repaid. I don't really know the

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exact specifics of it. But those -- that meeting on October 3, that topic certainly came up.

Q. Do you recall whether that topic was discussed in any prior meeting, either on October 1 or any earlier date?

A. I can't really say. I don't believe so.

Q. You don't recall?

A. I don't recall.

Q. For what reason were you inquiring about matters involving JP Morgan Chase?

WITNESS' ATTORNEY: Objection to form. It is OK, you can answer.

A. We were trying -- well, one piece of my role, a very significant piece, I don't know that I mentioned it, was we were doing cash management. So we were trying to -- in any bankruptcy case, cash, understanding your cash position on the day of filing and what it is going to be going forward is imperative.

So JP Morgan Chase was their bank, obviously. You know, I was somewhat shocked at the fact that the moment I walked in there, I

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couldn't get a cash balance, what is your total cash. That question was a question that probably took a week or two to answer.

Q. And why did it take so long to answer? Were you given an explanation as to why it took so long to answer?

A. Yes.

Q. What was the explanation?

A. That Chase had, quote/unquote, shut down the systems, turned off the screens, things like that.

Q. Were you told when that first occurred?

A. I don't recall exactly, but I think it was a few days after the bankruptcy. I don't have a perfect recollection of the timing.

Q. Did you participate in any discussions with Alvarez or Lehman executives concerning the estimate of cure payments that Lehman had presented in connection with the sale transaction?

A. Yes. I believe that was a -- in any bankruptcy scenario where there is a sale and there is an assumption and assignment of

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contracts, we want to make sure that's a controlled process and people are tracking it. Lehman, being such a big entity, the fact that there was an LBHI Chapter 11 proceeding, as well as an LBI proceeding seemed to complicate that matter. We wanted to -- the conversations I had I recall were that we wanted to make sure we were staying on top of the people who were trying, supposed to be monitoring that process, that LBHI had a process in place that two years later and we don't have a situation where a contract was assumed by Barclays and paid, presumably, and then this party files a claim in the bankruptcy.

So that was the context. And there were discussions and we had a meeting on it. I think that was probably mid October or something. I don't know.

Q. What was FTI's focus with respect to cure payments?

WITNESS' ATTORNEY: Object to form.

A. The focus was, as I said, to insure that claims weren't actually double counted.

Q. Did FTI do anything or ask any

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questions relating to the cure estimate that Lehman had provided in connection with the sale transaction?

WITNESS' ATTORNEY: Object to form and foundation.

A. I don't recall asking for -- maybe we did ask for, you know, substantiation of that where did you get such -- the cure number, whatever that cure number was that was stated. But I don't recall ever getting into any depth on it or receiving any sort of information that would have led me to believe that's a good or bad number.

Q. What work did FTI do to analyze the actual cure payments that were being made in connection with the Lehman bankruptcy?

WITNESS' ATTORNEY: I am going to object and -- on attorney/client and work product privilege.

You can describe in a general way what FTI was doing, but don't get into the substance of any communications that you gave the committee or specifics with FTI. You can say what the general project was

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related to cure payments if you know at FTI.

A. OK. I think our work was principally, as I mentioned before, trying to understand whether or not there was a process in place whereby Barclays, LBI and LBHI were all somehow communicating so that we didn't have the situation I mentioned before of creditors coming in -- I think the bar date was 12 or 13 months later. The claims bar date was obviously much later and we wanted to, as I mentioned, insure that there wasn't a situation where there was no control over the payments being made such that creditors could assert a claim while they were already paid.

Q. Did FTI do anything to review the public filings concerning cure payments relating to closing date contracts or designated contracts?

WITNESS' ATTORNEY: You can answer that yes or no. We will take it from there.

THE WITNESS: OK.

A. Yes.

Q. And that information was available on the Epiq website, is that correct?

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A. Yes.

Q. Did FTI do anything to total the cure payments for closing date contracts?

WITNESS' ATTORNEY: I am going to object on privilege and I would like to take a break to discuss -- just so I can resolve some privilege issues for this kind of questioning.

Step outside just for a second.

THE VIDEOGRAPHER: The time is 9:58, we are now off the record.

(Recess)

THE VIDEOGRAPHER: The time is 10 a.m., we are now on the record.

Q. Now that we are back on the record. I'll just repeat my last question. Did FTI, to your knowledge, do anything to total or add up the cure payment amounts for closing date contracts that were posted on the Epiq website?

A. I don't know.

Q. Did FTI do anything to compare any of the cure payment amounts posted on the Epiq website with the cure estimate that Lehman had provided in connection with the sale

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1 TULLY
2 transaction?

3 A. I don't know.

4 Q. You don't know one way or the other?

5 A. No.

6 Q. Now, you have told me about a meeting
7 shortly after the closing, I believe your
8 recollection was that it was September 24 or
9 thereabouts. Is that right?

10 A. Yes.

11 Q. And you have described the general
12 substance of that meeting. When did you next
13 meet with people from Alvarez or Lehman?

14 A. I don't perfectly remember, but I'm
15 thinking it may have been like Friday, the 26th.

16 Q. Do you recall what the substance of
17 that discussion was?

18 A. Similar as I discussed before, we were
19 trying to understand the cash balances, so it
20 was really a meeting to figure out where Alvarez
21 & Marsal stood in terms of trying to get better
22 clarity into their cash position.

23 Q. When was the next time you met with
24 either Alvarez or former Lehman people?

25 A. I don't know for sure, but I think it
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1 TULLY

2 is sometime the next week.

3 Q. And what was the subject of that next
4 meeting?

5 A. Again, I think probably cash
6 management and employee retention, you know,
7 there was discussions of we need to make sure
8 that there is, there are people here to wind
9 down the estate.

10 Q. At some point that week of September
11 29th through October 3rd, did you have a meeting
12 with Alvarez or Lehman in which there was a
13 discussion concerning the Barclays' replacement
14 of the Fed repo?

15 A. I'm not sure.

16 Q. Do you recall at some point having
17 such a discussion?

18 A. I recall the Friday the 3rd
19 discussion. I honestly, I don't know if there
20 were previous discussions.

21 Q. So you recall the October 3
22 discussion, but you're just not sure if there
23 were previous discussions on that subject?

24 A. That's correct.

25 Q. Looking at Exhibit 463B, this reflects
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1 TULLY
2 the meeting you described as having occurred on
3 October 3, is that right?

4 A. Yes.

5 Q. Who participated in that October 3
6 meeting?

7 A. There were, there were a number of
8 meetings. We spent the entire day in Jersey
9 City. This particular portion of the meeting,
10 the three people shown on the top of the e-mail
11 participated, Dan Fleming, Mr. Jones, I don't
12 recall if his name is Cliff, I think it may have
13 been. Tamir Shafer as well as Bill Fox from
14 Alvarez & Marsal. I think Christopher Kelly
15 from Alvarez & Marsal may have been there.

16 I was in attendance obviously. Ben
17 Kream from my office and Houlihan Lokey had Mike
18 Livanos there. Michael Fazio was on site at the
19 Jersey City during that day. I don't recall if
20 he was in this meeting. I'm fairly certain he
21 wasn't actually.

22 Q. Starting at the top of your e-mail, it
23 states, "Gentlemen, I tried to summarize the
24 discussion regarding the JP Morgan Chase
25 collateral position as best I could based on the

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1 TULLY
2 discussion we had on Friday. Please let me know
3 if the following is accurate in your view,
4 understanding that much of our discussion on
5 Friday was based on incomplete and missing
6 information. If we can set another call to
7 discuss your comments and/or changes regarding
8 this summary, I would appreciate it."

9 Q. Did you ever receive a response to
10 that request?

11 A. No.

12 Q. Did you ever attempt to follow up on
13 that request?

14 A. I don't recall 100 percent, but I
15 imagine I may have sent Bill Fox follow-up
16 e-mails.

17 Q. Did it concern you that you did not
18 receive a response to that request?

19 WITNESS' ATTORNEY: Object to form.

20 A. Somewhat, I suppose.

21 Q. And what did you do about that
22 concern?

23 A. Discussed it with Sam Star, who I was
24 reporting to at the time.

25 Q. And why was that a concern of yours?
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A. I just thought understanding this was an important thing to understand.

Q. Important in relation to what?

WITNESS' ATTORNEY: Object to form.

A. Well, we believed that there could be potential causes of action against JP Morgan Chase and kind of nailing down the facts at some point seemed to me to be important.

That said, we did address these concerns with Alvarez & Marsal. My recollection is they said we have a team working on it and a forensic accounting team. We are going to do a full investigation, understanding what happened the week before the bankruptcy, the week of the bankruptcy, the week of -- initial week of the bankruptcy filing and the subsequent week and we will keep you posted on our findings and understanding. They involved us in that process to a certain degree and others at FTI were more involved than I was.

Q. Moving down the e-mail, there is a heading that reads LBI repo transactions. Do you see that?

A. Yes.

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TULLY

Q. Underneath that heading, it states, "Close of business, Wednesday, September 17, Lehman had a 45 billion dollar repo with the Fed Primary Dealer Credit Facility, PDCF, against collateral with a market value of 49.7 billion dollars."

Focusing on that statement, do you recall who provided you with that information?

A. Yes.

Q. Who?

A. Dan Fleming did most of the talking during this meeting and I'm quite certain it was him that made that statement.

Q. Did he explain the basis for the market value figure that he provided?

A. He did not.

Q. Did Mr. Livanos raise any questions about that at the meeting?

A. It's hard to recall. I don't know.

Q. Moving to the next paragraph, it states, "Close of business on Thursday, the Fed wanted out of the repo and required Barclays to step into the trade."

Do you recall who told you that?

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TULLY

A. Yes, again I believe it was Dan Fleming.

Q. Did he explain why the Fed wanted out of the repo?

A. No.

Q. Was there any discussion of that subject?

A. No.

Q. Then you write, "I am not totally clear on how this worked or if Barclays agreed to this, but I believe as part of the Barclays transaction. They settled up with the Fed on Friday, (See the attached summary I received from A&M Jim Fogarty's group)."

The summary that you're referencing is the summary that appears after the first two pages of this document?

A. I believe that's correct.

Q. Can you explain the circumstances in which Mr. -- withdrawn.

Who provided you with that summary?

A. Judging by the e-mail, I believe it was someone either -- someone at A&M, either Jim Fogarty or someone who who worked for him.

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TULLY

Q. When did they provide you that summary?

A. I believe it was probably the week of September 29th. I don't recall the day.

Q. What was the reason that they provided that summary to you?

WITNESS' ATTORNEY: Object to form, foundation. Again, I'm not even 100 percent clear if it was provided to me directly or someone else within FTI.

Q. Fair enough. Do you know why it was provided to FTI?

A. I believe it was to gain an understanding -- gain an initial understanding of what A&M's understanding of the transaction was.

Q. That is the Barclays Lehman transaction?

A. The Barclays -- yes, yes.

Q. Do you know whether A&M gave the same information to Houlihan?

WITNESS' ATTORNEY: Object to form, foundation.

A. I believe we were probably both

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TULLY

present. A lot of times, like the meeting on the 3rd, we were present on a lot of the meetings of A&M, jointly, Houlihan and FTI were present at a lot of those meetings.

Q. Do you know whether the summary was provided by A&M to FTI and Houlihan at a meeting that both FTI and Houlihan attended?

A. That, I believe that that may have been the case. I can't tell you for sure.

Q. And when A&M, when Alvarez provided the summary, did they explain any of its contents?

A. I don't recall them explaining the contents.

Q. Did anybody from -- did anybody from Houlihan or from FTI ask Alvarez to explain the contents of this summary?

WITNESS' ATTORNEY: Objection, foundation.

A. I'm not sure. My recollection is this was a very preliminary summary and perhaps the people at Fogarty -- Fogarty didn't put it together himself, I didn't think. I believe it was probably someone working for him. I don't

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TULLY

know how much probing went on with regard to this. I do recall it being very preliminary and that they were still trying to themselves, A&M -- again, I don't know. They weren't present, I don't think at the -- didn't have a lot to do with the transaction. So I think A&M as a firm were trying to understand the transaction and this was a tool they were using to try to figure out what happened.

Q. And you believe the information reflected on this summary is information that Alvarez obtained from other individuals with more direct knowledge?

WITNESS' ATTORNEY: Objection, lack of foundation.

MS. DEL MEDICO: Objection.

A. That's my belief.

Q. Staying with your e-mail on the first page and moving further down, this paragraph that begins on Thursday night, it is the third paragraph from the bottom. Do you see that?

A. Yes.

Q. Let me move to the what I think is the third sentence, it says, "Discussed 7 billion

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dollars of collateral missing." Do you see where I am?

A. Yes.

Q. It states, "Discussed 7 billion dollars of collateral 'missing.' But I believe this just means everything didn't clear, so Chase ended up doing a 7 billion dollar box loan."

What do you recall being told at that time about 7 billion dollars of collateral missing?

A. I recall a discussion of how unprecedented a transaction this large would have been, that the DTC and people from Chase and Lehman spent all night trying to reconcile a trade that large. I recall it inferred that it was just physically impossible to get all that work done and that a certain amount of collateral didn't get cleared if you will. And therefore, it was, quote/unquote, missing. And it forced Chase to make a loan against that collateral that it believed it held in the box but just didn't clear.

Q. What were you told about the Chase

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TULLY

loan if you remember?

A. I don't recall, it's -- a more specific question, I don't know what --

Q. Sure, sure. Do you recall being told anything about how that 7 billion dollars of missing collateral was handled as between Barclays on the one hand and Lehman and Chase on the other hand?

A. I don't recall an exact conversation on that.

Q. You recall being told something about a Chase loan that resulted from this situation?

A. Yes, that you could draw a conclusion from that that Chase paid off, made a payment of cash and gave a loan to Lehman. But I don't know that we were getting so specific in the discussion.

Q. You refer to the term "box loan" in quotes. What is your understanding of what a box loan is?

A. It is a loan that a bank would make against securities that the bank had custody of and held in a box.

Q. The box being an account?

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TULLY

A. Yeah. I think it is an old term that, I guess, there were physical securities at one point in time and there were boxes that were held and it is just a term of art now in banking.

Q. You go on to say there were also issues with collateral getting stuck at DTC, the guestimated amount is 800 million dollars. What do you recall being told about issues with collateral getting stuck at DTC?

A. Not a lot really, I just remember that being stated. I don't recall truly understanding the back office machinations that would have caused such an event.

Q. Did you have an understanding that that was something that had occurred in connection with the mechanics of Barclays replacing the Fed repo?

WITNESS' ATTORNEY: Object to form.

MS. TABATABAI: Join in the objection.

A. I'm not sure which piece it referred to.

Q. I want to move to the second page of the e-mail. At the top of the page, fourth line

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TULLY

down, it states, "We had a brief discussion of the quality of collateral pledged under the repos and it seems that some of it was far from high quality securities. Do you recall who told you that?"

A. I believe Dan Fleming and I don't know that he said it that definitively. I think he described some of the collateral and it just occurred to me that it wasn't U.S. Treasuries, most of the things, but something less, less liquid.

Q. Then it goes on to say, "We briefly discussed an amount, I think it was 5 billion dollars, was related to Lehman commercial paper or some other instrument credit-linked to Lehman CP."

What do you recall being discussed on that subject?

A. That was pretty much the extent of it. I don't know anything further.

Q. Is that a reference to an amount of certain securities that were included as repo collateral?

A. Yes.

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TULLY

WITNESS' ATTORNEY: I am going to object to form and put in for clarification that there are multiple repos that are being discussed in this document if it is possible for you to clarify when you say repo collateral.

Q. Do you recall whether that reference to Lehman commercial paper or some other instrument credit linked to Lehman CP was a reference to collateral that had been transferred to Barclays when Barclays replaced the Fed repo?

A. I don't recall completely, but I think it was the opposite. I think it was the collateral under the repo that Chase stepped into. Again, I'm sort of speculating here. I don't recall completely.

Q. So you're not sure?

A. That's fair, I'm -- I --

Q. It could have been a reference to the collateral for the 15.8 billion dollar repo or could have been a reference to collateral in connection with the Barclays replacement of the Fed repo?

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TULLY

A. Yes, but I'm more certain that it was the 15.8 in this context where it sits in the paragraph and I could reread the paragraph and maybe refresh my memory, but --

WITNESS' ATTORNEY: I am sorry, did you finish your sentence?

A. No, I was, you know, I think we could clarify it by reading this e-mail. If you would like, I can do that and respond.

Q. Sure.

A. I'm fairly certain that this collateral was related to the 15.8 billion. This whole discussion is really more of the thrust of what my review of this situation was which is trying to understand JP Morgan Chase. It seems like this paragraph is trying to get into gaining a better understanding of how over or under-collateralized Chase was.

Q. Was there any discussion concerning whether Chase would transfer any of this collateral that it held to Barclays in replacement of the 7 billion dollar missing collateral?

WITNESS' ATTORNEY: Object to form.

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A. I didn't think the 7 billion dollars of missing collateral had implications on the Barclays repo that was mentioned above. I don't know if there was any transfer of collateral. I don't know.

Q. Do you have any understanding that the 7 billion dollars of collateral missing related to the replacement by Barclays of the Fed repo?

WITNESS' ATTORNEY: Object to form.

A. Again, I thought that was in relation to the 15.8 -- well, actually, I don't know is your answer. I'm not sure.

Q. Looking at the next line, you say, "In trying to tie this together to the Barclays transaction, I noted that the attached summary reflects a line called extinguish liability to Fed, 38 billion dollars. Is this the 45 billion Fed repo reduced for the 7 billion dollar box loan."

Do you see that?

A. Yes.

Q. Did you ever get an answer to that question from anyone?

A. No.

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Q. Did you ever follow up on that question with anyone?

A. I think as I answered before, I believe I followed up with Bill Fox, but I don't recall ever getting an answer. And again, there was another team of FTI people, Alvarez & Marsal people who were looking to fully understand this situation.

Q. Did you have any discussions with that team concerning this question?

WITNESS' ATTORNEY: Just answer yes or no to that.

A. I don't recall.

Q. You may have, but you don't recall?

A. Yes.

Q. Now, you say "In trying to tie this together to the Barclays transaction, I noted that the attached summary reflects a line called 'extinguish liability to Fed, 38 billion dollars.'"

Let's turn to the next page. Is this the page that you were referring to in that portion of your e-mail?

A. Yes.

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TULLY

Q. And in the upper right side, under liabilities, it has a line that states "Extinguish liability to Fed, 38 billion dollars." IS that the line that you were referring to in your e-mail?

A. Yes.

Q. On the left side of this summary, there is a line that states, repo assets, 38.07. Did you have an understanding as to what that meant?

A. Not perfectly.

Q. What was your general understanding?

A. Generally it seemed like they were assets related to the repo.

Q. The Fed repo that Barclays replaced?

A. Yes.

Q. And then below that, "Negotiated mark haircut 5 billion," do you see that?

A. Yes.

Q. What was your understanding concerning what that meant?

A. Well, in any lending transaction, which is what a repo essentially is, there is not 100 percent lending on collateral. Just

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like a mortgage situation, if you are buying a house, the bank doesn't finance 100 percent of your house. They require a down payment. So haircut in the repo context is akin to that down payment. It is the equity cushion, if you will.

Q. Is that something that you understood based on your own knowledge or is that something that was discussed with Alvarez or others?

A. My own knowledge.

Q. Was there any discussion with Alvarez or others including Houlihan concerning this line labeled "negotiated mark haircut"?

A. I don't recall being part of any discussions on that.

Q. And then the next line states, "Assets transferred under repo, stale marks." Do you see that?

A. Yes, yes.

Q. What is your understanding of the reference to stale marks here?

A. I don't really have a good understanding of it.

Q. Did you ever participate in any discussion concerning that phrase at or around

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<p>1 TULLY</p> <p>2 the time of receiving this summary?</p> <p>3 A. I don't think so. I don't recall.</p> <p>4 Q. You don't recall one way or the other?</p> <p>5 A. No.</p> <p>6 Q. Below that, this refers to</p> <p>7 unencumbered box, 1.9. Do you know what that is</p> <p>8 a reference to?</p> <p>9 A. Not really. I can guess, but I don't</p> <p>10 know.</p> <p>11 Q. At the time, do you think you knew</p> <p>12 what that was?</p> <p>13 A. At the time --</p> <p>14 Q. At the time you received this summary?</p> <p>15 A. Not really.</p> <p>16 Q. At the time you received this summary</p> <p>17 that's attached to your e-mail, did you have any</p> <p>18 discussion with Houlihan concerning the contents</p> <p>19 of the summary?</p> <p>20 A. I don't recall.</p> <p>21 Q. You may have, but you don't recall?</p> <p>22 A. Yeah, that's correct.</p> <p>23 Q. At the time that you received this</p> <p>24 summary, did you have any discussions concerning</p> <p>25 the summary with either former Lehman executives</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 TULLY</p> <p>2 or anyone from Alvarez concerning the contents</p> <p>3 of the summary?</p> <p>4 A. No, I don't think so.</p> <p>5 Q. And what was the reason you attached</p> <p>6 the summary to this e-mail?</p> <p>7 A. I believe it was to try to piece</p> <p>8 together the question you were asking about</p> <p>9 before, bridging from the 45, which was my</p> <p>10 understanding based on the discussion of that</p> <p>11 was the balance of the loan to the Fed and the</p> <p>12 fact that this page showed 38.</p> <p>13 Q. So you were trying to piece together</p> <p>14 an explanation on that issue?</p> <p>15 A. Yes. And in the context, again, of</p> <p>16 what Chase may have been owed or what Chase</p> <p>17 believed its net, net position vis-a-vis Lehman</p> <p>18 was.</p> <p>19 Q. Aside from the issues that are</p> <p>20 reflected in your e-mail, were there any other</p> <p>21 topics discussed at the October 3 meeting?</p> <p>22 A. Yes.</p> <p>23 Q. What were those topics?</p> <p>24 A. There was a discussion with the, I</p> <p>25 guess accounting operations group on</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 TULLY</p> <p>2 understanding how Lehman accounted for their</p> <p>3 payroll and whether or not there was payroll at</p> <p>4 every single Lehman entity or whether or not</p> <p>5 they did it in a consolidated manner. Same</p> <p>6 question with respect to -- same discussion with</p> <p>7 respect to how they disbursed accounts payable,</p> <p>8 how they managed their accounts payable process.</p> <p>9 I'm trying to think, there is probably</p> <p>10 discussions on cash management more generally,</p> <p>11 trying to understand, you know, where cash was,</p> <p>12 understanding that JP Morgan cash was difficult</p> <p>13 to get visibility into. Other banks, you could</p> <p>14 tell how much the cash balances were, like</p> <p>15 Citibank.</p> <p>16 I'm trying to think if there were</p> <p>17 other more general discussions with Bill Fox as</p> <p>18 to how he was staffing his team and how he was</p> <p>19 going to manage the process, how he was going to</p> <p>20 bring -- you know, what size team he thought he</p> <p>21 needed to supplement his Alvarez & Marsal</p> <p>22 professionals. He would obviously need to bring</p> <p>23 in certain Lehman people. I recall talking</p> <p>24 about the tax group in particular.</p> <p>25 This was a monstrous sized</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 TULLY</p> <p>2 organization with thousands of tax returns and</p> <p>3 compliance that needed to be taken care of. So</p> <p>4 he was working on staffing that up. I remember</p> <p>5 talking, you know, particulars as to how big the</p> <p>6 tax team was and who he wanted to make offers</p> <p>7 to. And whether or not those people would be</p> <p>8 available. I think there was a thought that</p> <p>9 these people would be available because they</p> <p>10 would be somewhat redundant to the staff that</p> <p>11 Barclays already had in place.</p> <p>12 Q. Let me ask this, was there any further</p> <p>13 discussion at the October 3 meeting concerning</p> <p>14 any other topic relating to the Barclays sale</p> <p>15 transaction?</p> <p>16 A. No, I don't believe so.</p> <p>17 Q. Before the closing of the Barclays</p> <p>18 sale transaction on September 22, 2008, to the</p> <p>19 best of your knowledge, what interactions did</p> <p>20 FTI have with Lehman concerning the Barclays</p> <p>21 sale transaction?</p> <p>22 WITNESS' ATTORNEY: Objection,</p> <p>23 foundation.</p> <p>24 MS. DEL MEDICO: Objection to form.</p> <p>25 A. My understanding is FTI had no</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 TULLY</p> <p>2 discussions with Lehman or Barclays about the</p> <p>3 Barclays transactions. As stated, that was</p> <p>4 firmly in Houlihan's court. You know, we were</p> <p>5 joint financial advisors. We were very careful</p> <p>6 especially at the outset not to double up, if</p> <p>7 you will, to draw the ire of the U.S. trustee</p> <p>8 and not get paid for our work.</p> <p>9 Q. Did Mr. Eisenband attend any meetings</p> <p>10 over the weekend before the closing?</p> <p>11 A. No, he did not.</p> <p>12 Q. So Mr. Eisenband was not at Weil</p> <p>13 Gotshal over the weekend before the closing?</p> <p>14 WITNESS' ATTORNEY: Objection, lack of</p> <p>15 foundation.</p> <p>16 Q. If you know?</p> <p>17 A. He was not.</p> <p>18 Q. Was anybody from FTI to your knowledge</p> <p>19 at Weil Gotshal over that preclosing weekend?</p> <p>20 WITNESS' ATTORNEY: Objection,</p> <p>21 foundation.</p> <p>22 A. No one from FTI was there.</p> <p>23 Q. Did anyone from FTI attend the sale</p> <p>24 approval hearing on September 19?</p> <p>25 WITNESS' ATTORNEY: Objection,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 TULLY</p> <p>2 foundation.</p> <p>3 Q. If you know.</p> <p>4 A. I don't believe so. My strong</p> <p>5 inclination is no but I can't state that with</p> <p>6 100 percent certainty.</p> <p>7 Q. So from September 17 through September</p> <p>8 19, what was FTI's focus?</p> <p>9 WITNESS' ATTORNEY: Objection to form,</p> <p>10 foundation.</p> <p>11 A. Understanding the capital structure,</p> <p>12 what the total amount of debt outstanding was at</p> <p>13 Lehman, where that debt sat within the different</p> <p>14 legal entities, understanding of the legal</p> <p>15 entity org charts. That was my particular</p> <p>16 charge, those two items, trying to begin to get</p> <p>17 a handle on cash balances, although I think it</p> <p>18 was not possible at that time.</p> <p>19 We were involved in the TSA,</p> <p>20 transition services agreement. I dealt with the</p> <p>21 gentleman who we have had primary, you know,</p> <p>22 focus on that and asked him specific questions</p> <p>23 about what his attendance was at these meetings</p> <p>24 and closings and he confirmed for me through his</p> <p>25 time records and his recollection that he was</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 TULLY</p> <p>2 not there at any of those meetings. I believe</p> <p>3 he read the transition service agreement and</p> <p>4 gave the lawyers from Milbank comments on the</p> <p>5 document, things to include trying to get</p> <p>6 extended time periods and additional services</p> <p>7 added to that transition service agreement.</p> <p>8 So that was the extent of FTI's</p> <p>9 involvement in the Barclays transaction.</p> <p>10 Q. Do you know --</p> <p>11 WITNESS' ATTORNEY: Hold on.</p> <p>12 A. The only other thing I could think of</p> <p>13 is we were, Alvarez & Marsal were starting to</p> <p>14 think about, you know, how the IT backbone of</p> <p>15 this surviving entity would work and we were</p> <p>16 starting to find resources that could help them</p> <p>17 transition and back up information. That's the</p> <p>18 extent of our involvement as I recall.</p> <p>19 Q. Do you know whether John Sirius had any</p> <p>20 discussions with anybody from Lehman or Barclays</p> <p>21 or any of their professionals concerning how</p> <p>22 derivatives would be treated in the sale</p> <p>23 transaction?</p> <p>24 WITNESS' ATTORNEY: Objection, lack of</p> <p>25 foundation.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 TULLY</p> <p>2 MS. TABATABAI: Join in the objection.</p> <p>3 A. I don't have direct knowledge one way</p> <p>4 or the other. I know he dealt with derivatives.</p> <p>5 I don't know.</p> <p>6 WITNESS' ATTORNEY: If this is a good</p> <p>7 time for a break.</p> <p>8 MR. STERN: Sure, sure, we can take a</p> <p>9 break now if you want.</p> <p>10 THE VIDEOGRAPHER: This concludes tape</p> <p>11 number one in the videotape deposition of</p> <p>12 Conor Tully. The time is 10:40 a.m., we are</p> <p>13 now off the record.</p> <p>14 (Recess)</p> <p>15 THE VIDEOGRAPHER: This begins tape</p> <p>16 number 2 in the videotape deposition of</p> <p>17 Conor Tully. The time is 10:50 a.m., we are</p> <p>18 now on the record.</p> <p>19 Q. Mr. Tully, I have given a document we</p> <p>20 previously marked as Exhibit 580A. Do you have</p> <p>21 that in front of you?</p> <p>22 A. I do.</p> <p>23 Q. If you would look at the second page</p> <p>24 of this document, actually bottom of the first</p> <p>25 page, there is an e-mail Mary Korycki to Steven</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

TULLY

that transaction?

MS. DEL MEDICO: Objection.

A. I don't believe I was present at such a meeting.

Q. And just to be clear, you don't recognize the document that was marked as 613B?

A. Not at all.

MR. STERN: Let's mark this as the next document.

(Exhibit 614B, document Bates stamped FTI 00001 through 94 marked for identification, as of this date.)

Q. Mr. Tully, I have given a document that we have marked as Exhibit 614B. I would like for you to take your time to review the cover e-mail and to glance at the attachment and let me know if you can tell me what this is.

A. This appears to be the first, probably the first report that Alvarez & Marsal issued to the committee on I presume a meeting that occurred on October 8 with the debtors and the committee.

Q. Did you personally attend that meeting?

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A. I believe I did.

Q. Do you recall who else from FTI attended that meeting?

A. It was the first meeting, so I think we had a large group in attendance. I believe I was there, Sam Star, Mike Eisenband, Bob Darefsky, potentially John Sirus. There may have even been a real estate expert there from FTI's real estate team. I don't know. Maybe a couple others.

Q. Do you recall who attended from Houlihan?

A. I believe it was their core team, senior people. Again, I -- I don't have perfect recollection, but if I had to guess, I would probably say Saul was there, Fazio, Brad Gear.

Q. Were any of the creditors committee members in attendance?

A. Yeah, I believe substantially all of them would have been there.

Q. Did anybody from Weil Gotshal to your knowledge attend?

A. Certainly.

Q. Did anybody from Milbank or Quinn

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Emanuel attend this meeting?

A. I would say yes to both.

Q. Do you recall who from Quinn Emanuel attended this meeting?

A. I don't. It is an assumption that they were there. I don't know for a fact that they were. I would say more -- with almost complete certainty that Milbank was there and I would say that Quinn most likely was there but I don't recall that.

Q. I would like to turn your attention to the page that is numbered at the bottom FTI 30 the bottom right. I am sorry, yes, FTI 00000030. Do you have that page?

A. I have it.

Q. And do you see at the top of the page it is labeled "III, significant transactions"?

A. Yes.

Q. And below that, it has, "A, Sale of Lehman Brothers Inc./broker/dealer to Barclays (Fogarty)." Do you recall being present for this part of the presentation?

A. Not particularly. But I imagine I was.

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Q. Below that heading, there is a line that says, "assets purchased," and then below that, it has a line that states, "43.1 billion repo assets, book value per Lehman stale marks, negotiated a 5 billion dollar reduction."

Do you see that statement?

A. Yes.

Q. Do you recall whether there was any discussion at that meeting concerning the information in that line?

A. I don't recall.

Q. Do you recall whether anyone from Houlihan said anything about the information in that line?

A. I don't recall.

Q. Do you recall whether anyone from Houlihan raised any questions at that meeting concerning the reference to stale marks or the reference to negotiated a 5 billion dollar reduction?

A. No.

Q. You just don't recall?

A. I don't.

Q. So just to be clear, it's possible but

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you simply don't recall?

A. I don't.

Q. Looking at this page, this part of the presentation, do you recall anything that was discussed concerning any element of this page of the presentation at that meeting?

A. No.

Q. Let me show you a document we previously marked as Exhibit 582A. I would like you to take your time and review these e-mails and then I will have some questions for you about certain parts of the e-mails.

A. OK.

Q. Have you had a chance to glance at this?

A. Yeah, I'm --

Q. We will go through it more slowly.

A. Sure.

Q. Let's start on the second page of the document, at the bottom of that page, there is an e-mail from Mary Korycki to you on October 14 and she asks you if a particular time would work for a conference call regarding the assumption of vendor contracts. Do you see that?

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A. Yes.

Q. What was the issue concerning assumption of vendor contracts that you were planning to discuss with Alvarez at that time?

A. Again, I think this came up previously, we wanted to try to understand what contracts were being assumed, what were being rejected, how to go through the claims process, that kind of thing.

Q. And then above that, there are some further e-mail exchanges on scheduling and then on the first page, you write an e-mail to Mary Korycki on October 15 and you copy Ken Gross, Sam Star and Bill Gordon. Is Ken Gross an Alvarez person?

A. No, Kenny Gross worked for me on this piece of the engagement.

Q. Sam Star is with FTI?

A. Yes.

Q. Bill Gordon?

A. He is with Alvarez.

Q. And you write, "OK, can we try to set it up for tomorrow. I want to confirm who is going to participate. I think it was Larry

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Bortstein, Patrick Coster and A&M."

Who is Larry Bortstein?

A. Larry was an internal counsel at Lehman who remained at Lehman. He was, I think, one of the big responsibilities was contracting with vendors.

Q. Did you ever end up having a discussion with him?

A. I did.

Q. What did you discuss with him?

A. Their process for assumption of contracts and vetting through all the contracts that Lehman had, trying to figure out which ones they needed to continue to maintain and which ones should be rejected promptly to save administrative expense.

Q. Did you have any discussion with him concerning Lehman's estimate of cure payments?

A. No.

Q. Did he provide with you any written information?

A. I don't believe so.

Q. Did you ever meet -- who is Patrick Coster?

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A. I can't recall.

Q. Did you ever meet him?

A. I don't think so.

Q. And then you write, "After giving it some more thought, it may make sense to have someone from Epiq join also." Did you ever have a meeting with Epiq on this subject?

A. No.

Q. Why were you suggesting that perhaps Epiq should join the meeting?

A. Because I wanted to understand what they were intending to do with respect to all the contracts and how to keep track of them and satisfy myself that they were going to be sort of the person in the middle conducting traffic between LBHI, LBI, Barclays and anyone else, even the foreign administrators to understand the contracts that were needed which were assumed and which were rejected, which would be rejected. Just make sure that there was a control in place to keep track of all this.

Q. And over time, did you receive that information?

A. I don't recall receiving anything

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substantive on it.

Q. Was that information available publicly?

A. I think some of that information was on the Epiq website as you mentioned previously.

Q. Then you go on to write, "In discussing this with Bill Gordon, I know A&M's goals are as follows: One, understand what is being assumed and cured; two, understand what is not being assumed to determine if contract may be needed by legacy Lehman. We may also find situations where the contracts are advantageous and could be assumed and sent to other parties; and three, get a general understanding of the contract universe to help further develop our understanding and define the services to be provided under the TSA."

Did you ever obtain information that helped you get a general understanding of the contract universe?

A. I don't believe so.

Q. Do you know whether A&M did?

WITNESS' ATTORNEY: Objection, lack of foundation.

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A. I presume that they did, I don't know.

Q. Then at the bottom of the first page of this exhibit, you write, "In addition, I would like to get a better understanding of how the transaction dealt with executory contracts in general; one, I understand that cure costs are the obligation of Barclays; two, our committee has inquired numerously regarding the estimated 2 billion in cure costs. I believe that statement was made on the record in court. We want to understand if that number has a basis. Also the committee is interested in understanding the total cost to cure contracts under the Barclays transaction."

Now, with respect to your first point here, "I understand that cure costs are the obligation of Barclays," what was the purpose for that statement?

A. I think general discussions and the purpose for putting it in the e-mail was try to confirm if that was, in fact, a correct assumption. I hadn't read the contract and wasn't involved in the transaction.

Q. Then with respect to your second point

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concerning the estimate, what was the reason you were raising this question at this time?

WITNESS' ATTORNEY: Object to form.

A. Again, I was not very close to the transaction, I had received, you know, I guess calls or e-mails or heard of the committee wanting to understand the overall consideration of the transaction better. I, you know, followed up with who I thought at A&M would be the appropriate person who may be able to provide a detailed listing of the estimated cure payment.

Q. Did A&M ever respond to that request?

A. I don't believe so.

Q. Was there any follow-up on that request by FTI?

WITNESS' ATTORNEY: Objection, lack of foundation.

A. I believe we did follow up and ask, but I don't recall ever getting satisfaction on it.

Q. What did FTI do to follow up?

WITNESS' ATTORNEY: Objection, lack of foundation.

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A. I don't recall particularly, but maybe forwarded this e-mail, maybe mentioned it in passing to Bill Gordon and to Mary Korycki.

Q. And there was no response?

A. Not that I can recall.

Q. Was that of concern to FTI?

WITNESS' ATTORNEY: Objection, lack of foundation.

A. Somewhat. I would say somewhat concerning. I guess we never provided that information to our committee and we wanted to be able to provide this information.

Q. What do you mean when you say it was somewhat concerning?

WITNESS' ATTORNEY: Objection to form.

A. I was concerned the A&M people may not have had a good handle on whether or not that was a good number.

Q. And given that concern, what steps did you consider taking in order to address that question?

WITNESS' ATTORNEY: I am going to object on attorney/client and work product privilege. You can talk about any steps

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that you took regarding communicating with someone other than internally at FTI or the committee.

A. OK. Again, I believe we followed up with people who we sent this e-mail to.

Q. Beyond that, did you do anything?

WITNESS' ATTORNEY: Same objection and instruction. So if you have other steps, that you contacted someone other than internally at FTI or the committee, you should describe them.

A. I don't recall.

(Exhibit 615B, document Bates stamped FTI429 through 431 marked for identification, as of this date.)

Q. Before we look at this document, let me ask you if you know what estimate Lehman presented to the court in connection with anticipated cure payments? Is that something you know?

A. I wasn't in attendance. I think based on this e-mail, I just read it may have been in the 2 million -- 2 billion dollar neighborhood.

Q. Do you know if that was the amount?

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A. No.

Q. Did you ever find out anything from Alvarez or any former Lehman person concerning how that estimate was arrived at?

A. I don't think so.

Q. You're not sure?

A. Not 100 percent, but I don't recall seeing anything with a massive listing of vendors, cure payments in sum due 2 billion. I certainly don't recall seeing something like that.

Q. Do you recall ever receiving any explanation, whether orally or in writing from Lehman or Alvarez concerning how that estimate was arrived at?

A. I don't recall.

Q. You may have but you don't recall?

A. That's right.

Q. Can you tell me all of the individuals at Lehman and Alvarez with whom you discussed that issue, either through e-mail or in person?

WITNESS' ATTORNEY: Object to form.

A. Yes, at Lehman, it was Bill Gordon, Mary Korycki, a gentleman who worked for Bill

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who was an IT person who was trying to build a database to keep track of this information. I don't recall his name.

From Lehman, it was the Bortstein gentleman. There was a woman, I think her name may have been Patricia. That's kind of a guess. I met her once. There may have been one other person in the room. I don't recall if it was an A&M person or a Lehman person.

Q. What did you learn about how Lehman had gone about preparing the cure payment estimate?

A. Nothing that I can recall.

Q. Mr. Bortstein didn't have any insight on that?

A. I don't think so.

Q. And the woman whose name you think was Patricia didn't have any insight on that?

A. No, the conversation was definitely focused on keeping track of information going forward and understanding the universe of contracts and what systems those contracts were tracked in and resided in and which contracts Barclays expressed a desire to continue to have

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and cure and which ones they didn't, which ones they needed to facilitate the transition service agreement and continuing to provide services to Lehman brokers.

Q. So the focus --

A. Which ones may have been involved with their, in some way implicate the Nomura transaction. It was all -- it was in that vein, not in trying to understand whether or not 2 billion or whatever the number was substantiated.

Q. So the focus was on the actual assumption of contracts and actual cure payments rather than the estimate, is that fair?

WITNESS' ATTORNEY: Object to form, asked and answered.

MS. DEL MEDICO: Join in the objection.

MS. TABATABAI: Join in the objection.

A. That's fair.

Q. Did you ever compare the actual cure payment information with the estimate that you knew about?

WITNESS' ATTORNEY: You should just

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answer yes or no to that.

A. No.

Q. Do you know whether the actual cure payments were below the estimate?

A. I don't.

Q. Back in October 2008, did you have a general idea of what the cure payment estimate had been?

A. Not sure.

Q. Beyond what we have reviewed in your e-mails, you don't recall having any idea what that estimate was?

A. No.

Q. And you don't recall -- well, withdrawn.

Did you at some point in October of 2008 have an understanding concerning the total amount of actual cure payments Barclays would be making?

A. Did I have a concern?

Q. No, did you have an understanding as of October of 2008 concerning the actual cure payments as of that time?

WITNESS' ATTORNEY: Object to form.

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A. I don't recall perfectly. I don't recall exactly what was reported on the Epiq website, if there were actual amounts even in there or if it was just a vendor taking that contract or curing it.

Q. If there were actual amounts, is that information that you would have reviewed?

WITNESS' ATTORNEY: Object to form.

A. Potentially.

Q. Looking at the document that I just placed in front of you, Exhibit 615B, this appears to be a series of e-mails and starting from the bottom e-mail on the second page, there is an e-mail from Patrick Coster dated Friday, October 17, 2008, to Bill Gordon with a cc to Terrance Berland. And then it appears above that that Mr. Gordon forwards that to you. Do you see those e-mails?

A. Yes.

Q. And it refers to, the first e-mail refers to a listing of suppliers that Lehman will be assigning to BarCap. Do you recall receiving such a list?

A. I don't recall particularly.

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Q. Do you recall requesting such a list?

A. Yes.

Q. Why did you request such a list?

A. I think the request was made in a previous e-mail and described the concerns of understanding, tracking the amounts of the cures, understanding the overall universe, things like that.

MR. STERN: Let's mark these as the next exhibit.

(Exhibit 616B, document Bates stamped FTI 1152 through 1166 marked for identification, as of this date.)

MR. STERN: We have originals of these?

MR. WHITMORE: We do.

MR. STERN: Do these have anything privileged in them.

MR. WHITMORE: I have tried to cover up.

MR. STERN: Well, let me see if I can work from the copy. I don't want to invade the privilege here and I may be able to work from the copy.

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The copy that we have is not terrific and I think I would like to get a better copy.

MR. WHITMORE: OK.

Q. We have marked as 616B what appear to be a set of notes. Can you look at this document and tell us what these are?

Q. If you need to refer to your original, your counsel has that.

A. That's fine. I believe these were the notes that were taken during the meeting held on October 3, that Friday with Dan Fleming and other people we mentioned previously.

Q. So is it your recollection that this entire set of notes marked as 616B relate to a single meeting or series of meetings on October 3?

A. It was a series of meetings, not just that one meeting we talked about. There were other meetings -- where we talked about the other items like the infrastructure and accounts payable and how to handle that kind of stuff.

Q. But your recollection is that these notes were all taken on October 3?

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A. Yes.

Q. I'm just going to turn to certain pages and ask you to explain certain notes to me. If you could turn to the page that has the Bates number ending with the numbers 158. FTI 0001158.

A. Yes.

Q. Do you have that, it says "Chase" in the upper left?

A. Yes.

Q. About a quarter of the way down, there is a line that appears to read the 18th, can you just read what it says next to the 18th? It looks like Thursday night?

A. Yeah, it says, "Thursday night," it is tough to make out this number but it looks like it is 59 billion, maybe 39 billion, I'm not sure.

Q. Below that, "Friday night"?

A. Friday night is 39 billion, seems more legible, and then this looks like it says current night, 20 billion. I'm not sure though.

WITNESS' ATTORNEY: To be helpful, why don't you look at the original just to get

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those numbers right.

A. Yes, the original seems more legible that the Thursday night says 59 billion and then it does look like it says current, 20 billion.

Q. What did these figures relate to, to the best of your recollection?

A. I would think loan balances outstanding.

Q. Loan balances outstanding between Lehman and who?

A. Other counterparties.

Q. Now, below those figures there is a line that seems to say "details," why don't you read to me what that says?

A. I think it says details of entries or maybe it says entities, I don't know.

Q. If you to read the note below that.

A. James Giddens, SIPA trustee, Jamie Dimon -- Federal Reserve, BoNY, enforcement at SEC, at the SEC --

Q. And then below that?

A. 15d3.

Q. Do you know what the reference to the 15d3 is?

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A. Not really. I'm not a securities expert, but I think it might be 15c3-3, I think that would be my guess. I don't think -- at the time, I don't think it meant very much to me.

Q. Do you know what was discussed on that subject at this meeting?

A. No, not particularly.

Q. Moving below, there is a reference to what looks like Steve Green and then there is another line and then there is an arrow. Can you read what it says next to the arrow?

A. "Dan thinks 23 billion."

Q. Do you know what that is a reference to?

A. My guess is the Chase overdraft, quote/unquote overdraft that Chase alleged.

Q. And the Dan is Dan Fleming?

A. Yes.

Q. What was the Chase overdraft?

A. I believe it relates to the Chase repo and the box loan and things of that nature that we discussed earlier in that e-mail.

Q. Moving to the bottom of the page, it appears to say -- there is a word that says H

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something and then it says cash. Can you read that line?

A. Hemorrhage cash, retail customers.

Q. Does it say hemorrhage cash, refund customer?

A. Retail customers I think it says.

Q. It says retail, not refund?

A. R-E-T-A-I-L, yeah.

Q. Do you know what that line related to?

A. It may have related to the time around the filing when Lehman was likely hemorrhaging cash due to retail customer withdrawals, prime broker withdrawals, and "could still fund ops," I guess means they were still able to fund their operations. I don't recall this detail.

Q. If you could turn to the next page and just read into the record the notes on the next page.

A. "During the week, the Fed said PDCF, 45 billion of repo, 15.8 billion repo with Fed, 47 billion in collateral."

Q. Is that what it says, 47?

A. I am sorry, "49.7 billion of collateral. Chase sits in the middle as

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custodian. Decision made to take 45 billion, close of business Wednesday night, expect to have 60.8 billion on with Barclays, 49 market value, 45 of cash. To happen on Thursday, planned for on Wednesday night. Fed and DTC kept open till midnight, assets, missing 7.0 billion of collateral, missing lost 15.8 of funding."

Q. OK. Now, the reference at the top to PDCF, 45 billion of repo, do you recall what that relates to?

A. Can I refer back to the e-mail?

Q. Sure, sure.

A. This seems to be directly -- the e-mail is the transaction of this page, it appears.

Q. Sure. So we are looking at Exhibit 463B, that's the e-mail you're talking about?

A. Correct.

Q. OK, sure.

A. The question was explaining the 45 billion of repo?

Q. Well, let me ask you this, are these notes that you just read into the record, the

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notes of the conversation that you then summarized in your e-mail that we marked as Exhibit 463B?

A. Yes.

Q. Turning to the next page, are these also notes that relate to points that you summarized in your e-mail that we marked as Exhibit 463B?

A. Yes.

(Exhibit 617B, handwritten notes dated 7/23/08, four pages, marked for identification, as of this date.)

Q. Looking at Exhibit 617B, can you tell me what this is?

A. This appears to be the initial meeting that we had held with John Suckow that we discussed at the beginning of this discussion.

Q. This is the meeting -- in the upper, right-hand corner, it says 9/23/08. Does that refresh your recollection concerning when the meeting occurred?

A. Yes. I believe that that would have been the date it occurred. I think I may have said the 4th earlier.

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Q. Yes.

A. I'll correct that then. It seems that it would have occurred on the 23rd.

Q. But these are notes of that meeting?

A. Correct.

MR. STERN: Let's take a short break.

THE VIDEOGRAPHER: The time is 11:39

a.m. We are now off the record.

(Recess)

THE VIDEOGRAPHER: The time is 11:45

a.m. We are now on the record.

Q. Earlier we looked at material relating to an October 8, 2008 presentation by Alvarez to the creditors committee. When you attended that presentation, did you take any notes?

A. I don't recall off the top of my head.

Q. If you have those notes, would you --

A. I brought my marked copy of the presentation and I didn't write anything essentially in there except circled one number on a page, maybe page 15, negative balance for the Chase account that drew my interest obviously because that was cash.

MR. STERN: Is this a document that

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has been produced, what he has been referring to, the marked copy?

MR. WHITMORE: That's the thing we made a copy of.

Q. Can you, I'm not going to --

A. I guessed 15, but it was somewhere in that vicinity, I don't recall. I can find it for you.

WITNESS' ATTORNEY: It is on 15, the presentation.

Q. Aside from that notation, you're not aware that you have any other notes of this presentation?

(Continued on next page for jurat)

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HIGHLY CONFIDENTIAL

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UNITED STATES BANKRUPTCY COURT

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SOUTHERN DISTRICT OF NEW YORK

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In Re:

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Chapter 11

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LEHMAN BROTHERS

Case No. 08-13555(JMP)

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HOLDINGS, INC., et al., (Jointly Administered)

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Debtors.

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* * *HIGHLY CONFIDENTIAL* * *

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DEPOSITION OF MARK WASHTELL

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New York, New York

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June 17, 2010

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Reported by:

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KATHY S. KLEPFER, RMR, RPR, CRR, CLR

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JOB NO. 31054

Page 2	Page 3
<p>1 HIGHLY CONFIDENTIAL</p> <p>2 June 17, 2010</p> <p>3 9:45 A.M.</p> <p>4</p> <p>5 Deposition of MARK WASHTELL,</p> <p>6 held at the law offices of Jones Day, LLP,</p> <p>7 222 East 41st Street, New York, New York,</p> <p>8 before Kathy S. Klepfer, a Registered</p> <p>9 Professional Reporter, Registered Merit</p> <p>10 Reporter, Certified Realtime Reporter,</p> <p>11 Certified Livenote Reporter, and Notary</p> <p>12 Public of the State of New York.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL</p> <p>2</p> <p>3 A P P E A R A N C E S:</p> <p>4</p> <p>5 JONES DAY, LLP</p> <p>6 Attorneys for Lehman Brothers, Inc.</p> <p>7 222 East 41st Street</p> <p>8 New York, New York 10017-6702</p> <p>9 BY: KELLY A. CARRERO, ESQ.</p> <p>10 MICHAEL DAILEY, ESQ.</p> <p>11 JOSH BROMBERG (Summer Associate)</p> <p>12</p> <p>13 BOIES, SCHILLER & FLEXNER, LLP</p> <p>14 Attorneys for Barclays</p> <p>15 401 East Las Olas Boulevard</p> <p>16 Suite 1200</p> <p>17 Fort Lauderdale, Florida 33301</p> <p>18 BY: TODD THOMAS, ESQ.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
Page 4	Page 5
<p>1 HIGHLY CONFIDENTIAL</p> <p>2 A P P E A R A N C E S: (Cont'd.)</p> <p>3</p> <p>4 QUINN, EMANUEL, URQUHART & SULLIVAN, LLP</p> <p>5 Attorneys for the Creditors Committee</p> <p>6 51 Madison Avenue</p> <p>7 22nd Floor</p> <p>8 New York, New York 10010</p> <p>9 BY: ERIC M. KAY, ESQ.</p> <p>10</p> <p>11 HUGHES, HUBBARD & REED, LLP</p> <p>12 Attorneys for the SIPA Trustee</p> <p>13 One Battery Park Plaza</p> <p>14 New York, New York 10004</p> <p>15 BY: NEIL J. OXFORD, ESQ.</p> <p>16</p> <p>17</p> <p>18</p> <p>19 ALSO PRESENT:</p> <p>20 MARC VELLRATH, FSG</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 MARK WASHTELL, called as a</p> <p>3 witness, having been duly sworn by a Notary</p> <p>4 Public, was examined and testified as</p> <p>5 follows:</p> <p>6 EXAMINATION BY</p> <p>7 MS. CARRERO:</p> <p>8 Q. Good morning, Mr. Washtell. My name</p> <p>9 is Kelly Carrero. I'm with the law firm of</p> <p>10 Jones Day. We represent Lehman Brothers</p> <p>11 Holdings, Inc. in this matter. I have with me</p> <p>12 my colleague Michael Dailey and one of our</p> <p>13 summer associates, Josh Bromberg.</p> <p>14 And I'll let the other counsel around</p> <p>15 the table introduce themselves.</p> <p>16 MR. KAY: Sure. Eric Kay from Quinn</p> <p>17 Emanuel for the Official Creditors</p> <p>18 Committee.</p> <p>19 MR. THOMAS: Todd Thomas from Boies,</p> <p>20 Schiller & Flexner on behalf of Barclays and</p> <p>21 the witness.</p> <p>22 BY MS. CARRERO:</p> <p>23 Q. Mr. Washtell, can you tell us what</p> <p>24 your position, responsibilities, duties are at</p> <p>25 Barclays?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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HIGHLY CONFIDENTIAL - Washtell

A. Sure. I'm a director. I work within the Independent Valuation Control Group. I am currently responsible for the global equities asset class, in addition to the global FX and European emerging markets business.

Q. And was that your same title and responsibilities as of September 2008 at the time of the Lehman transaction?

A. As of September 2008, I was vice president in charge of, again, working with the Independent Valuation Control, responsible for the global equity derivative business for Barclays Capital.

Q. And when did the change in title and responsibilities take place?

A. At the start of 2009, I was promoted from vice president to director, and at some point in the end of Q1 '09, I took the additional asset class responsibilities.

Q. And who had responsibility for the other asset classes prior to your taking those on at the end of quarter 1 of 2009?

A. I don't recall exactly who, but I'm part of a management team, so the Global

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Independent Valuation Control Group is a team of approximately 100 individuals globally. Within that there are different directors responsible for different asset classes.

Q. Do you know if anyone had direct responsibility for global equities, for instance?

A. Well, that was, at the time -- at what time? Sorry.

Q. In September of 2008.

A. September 2008, Barclays did not have what we call global equities. We had a Global Equity Derivatives Group or business, and I was responsible for that.

Q. And why in September 2008 was there no global equities in existence?

A. That was not a business that we had at that time.

Q. Is that a business --

A. It's just the structure of the company was such we had a global equity derivatives group rather than a global equities business, which is what we have now.

Q. And was that change a consequence of

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the Lehman transaction?

MR. THOMAS: Objection to form.

A. That change was the consequence of a decision on the part of senior management of the bank, so ...

Q. But is it a change in what types of positions that Barclays held in 2008 as opposed to subsequent to then?

MR. THOMAS: Objection to form.

A. We have a different business, different equities business now than we had in September 2008, if that's what you mean.

Q. And how has that equities business changed between September 2008 and now?

A. I'm not best qualified to answer, that would be someone in the business, but in general terms, it's a much more global business. It now covers much more on the cash equity side than previously, when it was very focused on derivatives.

Q. And in 2008, how many people were within the Global Equities Derivatives Group?

A. I don't know.

Q. Besides yourself?

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A. You mean, by Global Equity Derivatives Group, what do you mean?

Q. I mean within the independent valuation function.

MR. THOMAS: Objection to form.

A. Within the Independent Valuation Group, specifically focused on equity derivatives working for me, I think approximately five.

Q. And did the Equity Derivatives PT Group, if we can agree that "PT" refers to your group, would that be an acceptable --

A. You could call it PT if you want. We would call it Independent Valuation Control, so IVC.

Q. IVC. Okay. We'll use IVC then.

So within your IVC Group that had five or so people in September of 2008, were you the leader of that group?

A. Yes.

Q. And who did you report to?

A. At that time, and still, Marcus Morton.

Q. And is Marcus Morton located in London

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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 or in New York?</p> <p>3 A. At that time, he was located in New</p> <p>4 York. He's now located in London.</p> <p>5 Q. And is there an equities counterpart</p> <p>6 of yours in the New York office?</p> <p>7 A. At that time in 2008?</p> <p>8 Q. At that time in 2008, yes.</p> <p>9 A. No.</p> <p>10 Q. We should also establish that you are</p> <p>11 located in London; is that correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And you were located in London in</p> <p>14 2008, correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And to what size has the Equities IVC</p> <p>17 Group grown since September 2008?</p> <p>18 A. We now have six full-time personnel in</p> <p>19 London and five full-time personnel in New York.</p> <p>20 Q. And is that growth a consequence of</p> <p>21 significant growth within Barclays' equities</p> <p>22 business?</p> <p>23 A. That's a contributing factor, yes.</p> <p>24 Q. Were, in 2008, were any of the members</p> <p>25 of the Equities IVC Group located in New York?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 A. No, at that time, they were not.</p> <p>3 Q. Mr. Washtell, I'm handing you what was</p> <p>4 previously marked as Deposition Exhibit 799B.</p> <p>5 A. Uh-huh.</p> <p>6 Q. Just take a moment to look it over.</p> <p>7 (Document review.)</p> <p>8 Q. I will represent to you that this is a</p> <p>9 document that was an exhibit to a brief</p> <p>10 submitted by Barclays' counsel in connection</p> <p>11 with the motion in limine to exclude one of</p> <p>12 Barclays' experts retained in this matter, and</p> <p>13 if you would turn to the second page titled</p> <p>14 "Global Independent Valuation." Do you see</p> <p>15 that?</p> <p>16 A. I do.</p> <p>17 Q. Have you seen this document before?</p> <p>18 A. Not this specific document, from my</p> <p>19 recollection, but I've seen similar documents.</p> <p>20 Q. And you would agree that your name</p> <p>21 does not appear on this document; is that</p> <p>22 correct?</p> <p>23 A. I haven't read it completely, but it</p> <p>24 doesn't stand out in bold like most of the other</p> <p>25 names. So I'm happy to accept it probably does</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 not.</p> <p>3 Q. If you would turn to the last page of</p> <p>4 the document and look at the names listed under</p> <p>5 "U.S. Equities Valuations"?</p> <p>6 A. Yes.</p> <p>7 Q. If your name were to appear on this</p> <p>8 list, would you expect it to appear among the</p> <p>9 names of the Equities IVC members?</p> <p>10 A. Were there a section for the Global</p> <p>11 Equities IVC team, then yes. This seems very</p> <p>12 specific to U.S. equity valuations.</p> <p>13 Q. So the names listed on Exhibit 799B</p> <p>14 are the members of Equities IVC that are located</p> <p>15 in the U.S.; is that correct?</p> <p>16 A. This looks correct as of a point in</p> <p>17 time.</p> <p>18 Q. And what point in time would this be</p> <p>19 correct as of?</p> <p>20 A. This looks correct to me as of the end</p> <p>21 of 2008.</p> <p>22 Q. And how has it changed since the end</p> <p>23 of 2008?</p> <p>24 A. Jerry Shi has left the firm, Katharine</p> <p>25 Gee has moved to a different asset class, the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 two executives both being promoted to assistant</p> <p>3 vice presidents, but it's still within the U.S.</p> <p>4 Equity Valuation Team.</p> <p>5 Q. And what asset class has Katharine Gee</p> <p>6 moved on to?</p> <p>7 A. She works in a sort of cross-asset</p> <p>8 client valuation role within the Independent</p> <p>9 Valuation Control Group.</p> <p>10 Q. Is it still related to equities</p> <p>11 whatsoever?</p> <p>12 A. Only in the sense that it is related</p> <p>13 to every other asset class. It's a cross-asset</p> <p>14 class client valuation group. She's not engaged</p> <p>15 in any day-to-day work in looking at the equity</p> <p>16 portfolio specifically from a valuation control</p> <p>17 perspective.</p> <p>18 Q. And were all four of the Equities IVC</p> <p>19 individuals listed on 799B part of that group as</p> <p>20 of September 2008?</p> <p>21 A. None of them were.</p> <p>22 MR. THOMAS: Objection.</p> <p>23 Q. Do you know as of what date they</p> <p>24 became part of the Equities IVC Group?</p> <p>25 A. I guess when you say -- could you say</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - Washtell 2 any of the equities positions? 3 A. Not as far as I recall, no. 4 Q. I just ask -- we didn't really go over 5 the housekeeping rules, which maybe we should. 6 I should have asked you, have you ever been 7 deposed before? 8 A. What's post? 9 Q. Deposed in a deposition? 10 A. I'm sorry, I thought you said have I 11 ever been to post. 12 No, I have never been deposed before. 13 Q. So one thing that will help make 14 things go smoother is that if you just let me 15 finish asking a question before you offer an 16 answer, and I'll try to do same. I'll wait for 17 you to complete your answer -- 18 A. Okay. 19 Q. -- before starting a new question. 20 And if you need a break, I would just 21 ask that you finish up answering whatever 22 pending question might be in existence and -- 23 A. Okay. 24 Q. -- then, if it's a good time to break, 25 we will. TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell 2 I believe where we had left off was 3 that Yu Zhou, you don't recollect whether he was 4 involved in valuing any of the positions 5 acquired from Lehman other than perhaps going 6 out and gathering some datasets? 7 A. Yes, that's correct. 8 Q. And the same thing holds true for 9 Kunal Kunde? 10 A. Yes. 11 Q. Were any other members of the Equities 12 IVC Group involved in valuing any of the 13 equities acquired from Lehman? 14 A. Members of my team in London at that 15 time were involved at my direction in obtaining 16 data which was used in determining the 17 valuation. 18 Q. And who are the members of the team in 19 London? 20 A. At that time, Jaspreet Bhatial. 21 Q. I think you're going to need to spell 22 these for the court reporter. 23 A. J-A-S-P-R-E-E-T. The surname is 24 B-H-A-T-I-W-A-L. He's a member of the London 25 Equity Independent Valuation Team, and has been TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - Washtell 2 since 2006. 3 He was the person principally involved 4 in the data collection. 5 Q. And who else within the London IVC 6 Group was involved? 7 A. No one extensively. 8 Q. Could you just name the individuals, 9 the other individuals of the Equities IVC Group 10 that were located in London? 11 A. Ana Acuna. Ana, as in A-N-A. Acuna, 12 as is A-C-U-N-A. Guillaume Froidure. 13 Guillaume, as in G-U-I-L-L-A-U-M-E for 14 Guillaume. And Froidure, as in F-R-O-I-D-U-R-E. 15 That's better. 16 Polykarpos Pappadopolous -- can I 17 write this down? 18 Q. There is not one easy name here. 19 A. There's not. 20 P-O-L-Y-K-A-R-P-O-S, Polykarpos. 21 Can I have a pen to spell 22 Pappadopolous so I get it right? 23 Q. Just your best guess. 24 A. P-A-P-P-A-D-O-P-O-L-O-U-S. 25 Q. Great. Thank you. TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell 2 Were members of IVC that covered other 3 asset classes involved to any extent with the 4 valuation of equity positions acquired from 5 Lehman in the transaction? 6 A. Not to my knowledge. 7 Q. So would the individuals that we've 8 discussed be an exhaustive list of the people 9 within Barclays IVG (sic) that were involved 10 with the valuation of equity positions? 11 A. Was involved with IVC, yes. The 12 individuals I have mentioned would be, to my 13 recollection now, the list of individuals I 14 would have used or consulted on in performing 15 the analysis of the equity portfolio. 16 Q. And did you have primary 17 responsibility for valuing the equities that 18 were transferred over in connection with the 19 Lehman transaction? 20 A. For the purposes of the opening 21 balance sheet? 22 Q. Yes. 23 A. Then, yes, I was principally 24 responsible for arriving at the fair value used 25 for the equity portfolio. TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 Q. Did you have primary responsibility</p> <p>3 for the valuation of any other types of</p> <p>4 securities that were acquired from Lehman for</p> <p>5 purposes of the opening balance sheet?</p> <p>6 A. No. It was purely what we called the</p> <p>7 equity portfolio, which included stocks,</p> <p>8 preferred stocks and convertible bonds.</p> <p>9 Q. What about equity options?</p> <p>10 A. There were no OTC equity options, and</p> <p>11 I was not involved in looking at the listed</p> <p>12 option valuation. That was, as I said before, I</p> <p>13 believe Jerry Shi.</p> <p>14 Q. And did Jerry Shi report to you upon</p> <p>15 joining the Barclays IVC Group?</p> <p>16 A. No.</p> <p>17 Q. Who did he report to?</p> <p>18 A. Marcus Morton.</p> <p>19 Q. Were you involved in the valuation of</p> <p>20 any securities other than securities within the</p> <p>21 equities portfolio with respect to securities</p> <p>22 acquired from Lehman for purposes of valuing</p> <p>23 them on the opening balance sheet?</p> <p>24 A. No, I was not.</p> <p>25 Q. Is there a specific part of the</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 business that the Equities IVC Group supports?</p> <p>3 A. Now?</p> <p>4 Q. Why don't we start back in September</p> <p>5 of -- prior to the Lehman acquisition.</p> <p>6 A. So we supported, if you want to call</p> <p>7 it that, or primarily responsible for the Equity</p> <p>8 Derivatives Group. The IVC Group is part of the</p> <p>9 Product Control function.</p> <p>10 Q. And just to follow up on that, the IVC</p> <p>11 Group is one of a number of subgroups within</p> <p>12 PCG; is that correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And how many subgroups are there</p> <p>15 within PCG?</p> <p>16 A. I don't know off the top of my head.</p> <p>17 Q. And who is the head of PCG?</p> <p>18 A. Paul Capson.</p> <p>19 Q. And would Marcus Morton, who you</p> <p>20 report to, report directly to Paul Capson?</p> <p>21 A. Correct.</p> <p>22 Q. If we can just go back to, so prior to</p> <p>23 the Lehman acquisition, your group had primary</p> <p>24 responsibility for the Equities Derivatives</p> <p>25 Desk; is that correct?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 A. That's correct.</p> <p>3 Q. And following the Lehman acquisition,</p> <p>4 what desks does your group have primary</p> <p>5 responsibility for?</p> <p>6 A. Now?</p> <p>7 Q. I'd only make the distinction if it's</p> <p>8 changed between immediately after the</p> <p>9 acquisition to present day. So if we need to,</p> <p>10 why don't we start with immediately after the</p> <p>11 acquisition.</p> <p>12 A. Immediately after the acquisition,</p> <p>13 Jerry Shi, with the team that you see here, was</p> <p>14 primarily responsible for the U.S. equities</p> <p>15 business. I was then primarily responsible for</p> <p>16 the Europe and Asia equities business.</p> <p>17 Following, just to clarify what I mean</p> <p>18 by equities business as opposed to equity</p> <p>19 derivatives business, following the acquisition</p> <p>20 on the effective relaunch, if you will, of the</p> <p>21 equities business, it was rebranded from equity</p> <p>22 derivatives to global equities.</p> <p>23 Q. And could you tell me what desks would</p> <p>24 fall under the U.S. equities business?</p> <p>25 A. That would be all desks trading cash</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 equities or equity derivatives or equity-related</p> <p>3 products, so convertible bonds, for instance.</p> <p>4 Q. And would the same hold true for the</p> <p>5 Europe and Asia equities business, the types of</p> <p>6 desks that would fall under that?</p> <p>7 A. The types of desks, yes.</p> <p>8 Q. You had described your group as having</p> <p>9 primary responsibility for, prior to the</p> <p>10 acquisition, the Equities Derivatives Desk.</p> <p>11 Could you explain what you mean by</p> <p>12 "primary responsibility"?</p> <p>13 A. That means I was responsible for all</p> <p>14 Independent Valuation Control work in relation</p> <p>15 to the Global Equity Derivatives Desk. It means</p> <p>16 I would meet with the global head of the Equity</p> <p>17 Derivatives Desk on a monthly basis, for</p> <p>18 example, to discuss our analysis of the</p> <p>19 valuation of that portfolio.</p> <p>20 Q. Could you explain what "independent</p> <p>21 valuation work" means?</p> <p>22 A. In simple terms, it means, on a</p> <p>23 regular basis, generally, at a minimum, monthly,</p> <p>24 that we will independently assess the valuation</p> <p>25 of the firm's trading positions to ensure that</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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2 they're marked at what we deem an appropriate
3 fair value as defined by the accounting
4 standards under which we operate.

5 Q. And which accounting standards do you
6 turn to for definition of "fair value"?

7 A. IS 39.

8 Q. And what does the independent
9 assessment that you've described entail?

10 A. Again, very generally, high level, it
11 entails us getting a complete population of all
12 trading book positions, looking at the valuation
13 in the trading systems of the firm, then going
14 externally to source independent data for all of
15 those positions to arrive at, effectively, an
16 independent valuation for the trading book
17 positions.

18 Q. And at the time that this independent
19 assessment takes place, you would be starting
20 with what a trader has independently valued a
21 position at; is that correct?

22 MR. THOMAS: Objection to form.

23 A. We would start with the marks or the
24 valuations in the trading systems of the firm
25 which feed the subledgers, the balance sheet and

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1 HIGHLY CONFIDENTIAL - Washtell
2 the financial statements, ultimately. That's
3 the valuation that Barclays has at month-end for
4 trading positions. We would then look to
5 independently assess the valuation of those
6 positions.

7 Q. And could you tell me the names of the
8 different systems that feed -- the trading
9 systems, for instance, that would feed into the
10 subledger that would then feed into the general
11 ledger, et cetera?

12 A. For equities?

13 Q. For equities, yes.

14 A. At that time, in 2008?

15 Q. Why don't we start with, has it
16 changed since the acquisition?

17 A. There are additional systems now.

18 Q. Were those additional systems in
19 existence at the time that you were undertaking
20 the valuation of the assets acquired from
21 Lehman?

22 A. Not within Barclays, no.

23 Q. So if we can talk about the systems
24 that were in place at the time that the
25 valuation of the securities that were

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1 HIGHLY CONFIDENTIAL - Washtell
2 acquired --

3 A. Sure.

4 Q. -- were being undertaken for purposes
5 of the opening balance sheet.

6 A. The principal trading system was
7 called SOPHIS. It still is called SOPHIS. The
8 subledger I believe is called FISS, F-I-S-S.

9 What was the rest of the question?

10 Q. And would FISS feed into --

11 A. The general ledger.

12 Q. -- a general ledger?

13 A. SAP.

14 Q. SAP.

15 And that would be the system from
16 which financial statements would be generated;
17 is that correct?

18 A. That's correct.

19 Q. And is there a specific system that
20 your group is looking at when they begin the
21 price testing process on a monthly basis?

22 A. We would look at SOPHIS, for example,
23 to obtain a position listing. The desk's risk
24 position.

25 Q. And would --

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2 A. And the desk's valuations, obviously.

3 Q. And that was going to be my next
4 question. So SOPHIS would contain whatever the
5 current mark was for each position?

6 A. Yes. Yes.

7 Q. And if your group had any -- if after
8 the price testing process there was a difference
9 found between the value that your group had
10 arrived at versus what was in SOPHIS, what would
11 be the next step?

12 A. The first step is we would discuss
13 that valuation difference with the trader
14 concerned who owns that position and who marks
15 that position. We would then, based on his
16 feedback, potentially take into account any
17 additional information that he's willing to
18 provide to try and reach agreement between us on
19 what is the appropriate valuation.

20 If we cannot reach agreement on that,
21 then subject to our policies and procedures of
22 the firm and materiality thresholds that are
23 defined therein, we would take adjustments to
24 the valuations to ensure that they're in line
25 with our independent valuations.

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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 Q. And what sort of record would be</p> <p>3 generated to document that there was a</p> <p>4 disagreement as to price?</p> <p>5 A. All of these positions that are</p> <p>6 tested, as well as any positions that are not</p> <p>7 tested, with all variances are reported on a</p> <p>8 monthly basis to the traders concerned, to the</p> <p>9 heads of Trading Management, to Product Control,</p> <p>10 Finance, Market Risk Management, and ultimately</p> <p>11 this is all discussed with our auditors as well</p> <p>12 as the regulators.</p> <p>13 Q. And do these variance reports have a</p> <p>14 specific name?</p> <p>15 A. Price Testing Reports, so,</p> <p>16 generically.</p> <p>17 Q. Do you know if any Price Testing</p> <p>18 Reports were generated in connection with any of</p> <p>19 the securities that were acquired from Lehman</p> <p>20 and price tested by your group?</p> <p>21 A. We produced a valuation, obviously, in</p> <p>22 the same way that we would perform our normal</p> <p>23 price testing process. That is, the list of</p> <p>24 assets that we had, we went out to obtain the</p> <p>25 independent market data that we would normally</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 do as part of that process to arrive at our</p> <p>3 independent valuation.</p> <p>4 Q. In the process of going through that</p> <p>5 independent valuation, would any differences</p> <p>6 between a price that was in SOPHIS at the time</p> <p>7 have been generated?</p> <p>8 A. In this case, this is different to our</p> <p>9 normal process because these were not positions</p> <p>10 on our books at the time that had a trader</p> <p>11 marking them, these were positions that we were</p> <p>12 effectively receiving in a spreadsheet and being</p> <p>13 asked to value. So I did not have a system</p> <p>14 valuation or a trader valuation at that point in</p> <p>15 time.</p> <p>16 Q. So there --</p> <p>17 A. So do I have a variance report? Not</p> <p>18 that I recall.</p> <p>19 Q. So there would be no marks in SOPHIS</p> <p>20 at the time that your group began the</p> <p>21 independent valuation process; is that correct?</p> <p>22 A. To the extent these positions were not</p> <p>23 booked in SOPHIS, SOPHIS would not have had a</p> <p>24 valuation for this position. That doesn't mean</p> <p>25 that if there were a stock in this portfolio,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 let's take, for example, IBM, that we would not</p> <p>3 have had a stock price for IBM in SOPHIS,</p> <p>4 because we would have had that.</p> <p>5 But this particular position I'm</p> <p>6 saying is part of a spreadsheet that we're</p> <p>7 assessing, a spreadsheet population, shall I</p> <p>8 say, that we're assessing the valuation of.</p> <p>9 Q. To the extent that Barclays had in</p> <p>10 SOPHIS already a position with the same CUSIP as</p> <p>11 what was being acquired from Lehman, would your</p> <p>12 independent valuation have resulted in the same</p> <p>13 price as what that same position was marked for</p> <p>14 in SOPHIS as of the same date?</p> <p>15 A. The pricing source we used is the</p> <p>16 same. It would be using SOPHIS. So, yes.</p> <p>17 Q. I'm not asking just if it's the same</p> <p>18 pricing source. I'm asking would it be the same</p> <p>19 price?</p> <p>20 MR. THOMAS: Objection to form.</p> <p>21 A. Because we're using the same pricing</p> <p>22 source, it should be the same price.</p> <p>23 Q. I'm asking --</p> <p>24 A. Now, did we reconcile to see where we</p> <p>25 had positions in SOPHIS with where we had</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 positions in this file? No. We didn't need to</p> <p>3 because, what we needed to do was obtain</p> <p>4 independent valuation data for the position in</p> <p>5 this file and we have established sources of</p> <p>6 information for doing that, and that's what we</p> <p>7 used. I did not go to SOPHIS to source that</p> <p>8 price.</p> <p>9 Q. So the equity positions were valued</p> <p>10 using a close of day September 22 price</p> <p>11 ultimately for purposes of the opening balance</p> <p>12 sheet, correct?</p> <p>13 MR. THOMAS: Objection to form.</p> <p>14 A. Say that again.</p> <p>15 Q. Is it correct that the equity</p> <p>16 positions for purposes of Barclays' opening</p> <p>17 balance sheet were valued using September 22</p> <p>18 close of day price?</p> <p>19 MR. THOMAS: Objection to form.</p> <p>20 A. That's correct, we used the closing</p> <p>21 price date of September 22.</p> <p>22 Q. So taking your example of IBM, if</p> <p>23 Lehman acquired IBM stock -- sorry, if Barclays</p> <p>24 acquired IBM stock from Lehman, if Barclays</p> <p>25 already owned IBM stock with the exact CUSIP,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 **HIGHLY CONFIDENTIAL - Washtell**
2 **would the September 22 valuation price be the**
3 **same for the same position on Barclays' books**
4 **and records?**

5 MR. THOMAS: Objection to form.

6 A. Yes, given it's using the same data
7 sources.

8 **Q. So if --**

9 A. Now, I should, just to clarify, most
10 of the positions we received and assessed the
11 value of would not, would not have been held in
12 Barclays' trading systems at that time because
13 the majority of the positions, or a large part
14 of them, they were all U.S. stocks, and a lot of
15 them were illiquid and names that we just would
16 not have been trading at that time.

17 In addition, we didn't have
18 significant cash eq. or we didn't have a cash
19 equity business at that time. We had an equity
20 derivative business. By definition, we would
21 have been trading the more liquid names, IBM
22 being an example.

23 **Q. There were a number of positions**
24 **already in SOPHIS; is that correct? I'm not**
25 **asking percentage-wise. There were, there were**

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1 **HIGHLY CONFIDENTIAL - Washtell**
2 **some, correct?**

3 A. Did we hold stock positions in SOPHIS?
4 Yes.

5 **Q. Prior to the acquisition?**

6 A. Yes. For the purposes principally of
7 hedging, delta hedging our equity derivative
8 portfolio.

9 **Q. So my question is really as simple as,**
10 **for those positions already in SOPHIS, was the**
11 **same price applied for purposes of valuing those**
12 **securities that were acquired from Lehman?**

13 MR. THOMAS: Objection to form.

14 A. Yes, the same last price at exchange
15 close.

16 **Q. And was the same bid/offer applied?**

17 MR. THOMAS: Objection to form.

18 A. At the time, as I said before -- well,
19 firstly, all positions within the firm are
20 assessed for bid/offer, and our definition of
21 "fair value" within the firm, in line with the
22 accounting standards, is that we need to mark
23 long positions to a bid value.

24 Given at that time we did not have a
25 cash equity business and all stock positions

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1 **HIGHLY CONFIDENTIAL - Washtell**
2 **would have been used to delta hedge our equity**
3 **derivative portfolio, that is, to effectively**
4 **flatten our equity exposure so we have a zero**
5 **sensitivity to the stock price, we wouldn't have**
6 **been taking explicit bid/offer provision on**
7 **equities; we would have been applying bid/offer**
8 **to the derivative portfolio based on the**
9 **derivative risk factors.**

10 **Q. A price for an existing position**
11 **within SOPHIS could have a different price than**
12 **what it was priced for for purposes of the**
13 **acquisition accounting of the Lehman**
14 **transaction; is that correct?**

15 MR. THOMAS: Objection to form.

16 A. What I'm saying is that we would not
17 have been holding the position in SOPHIS as an
18 outright position. Any positions held in SOPHIS
19 would have been held as part of a derivative
20 portfolio to delta hedge that portfolio. So, in
21 considering the valuation of those positions,
22 you need to consider the valuation of that
23 derivative portfolio.

24 If I delta hedge a derivative book
25 with stock, ultimately it doesn't matter where

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1 **HIGHLY CONFIDENTIAL - Washtell**
2 I'm valuing that stock because I'm delta neutral
3 to the valuation of that stock. So whether I
4 value a range of prices ultimately, the purpose
5 of holding that stock position is to delta hedge
6 the book. There's not going to be a valuation
7 impact.

8 **Q. Can you say definitively that there**
9 **are no overlapping equities that were not held**
10 **by Barclays at the time of the acquisition that**
11 **was not acting as a hedge?**

12 MR. THOMAS: Objection to form.

13 A. I can't talk definitively to the, now,
14 to the characteristics of the whole portfolio.
15 What I can tell you is we did not have a cash
16 equity business at that point in time, and I've
17 been quite clear about that. We have what we
18 called the equity derivatives business.

19 That means we were not principally
20 engaged in trading cash equities. We were
21 principally engaged in trading equity
22 derivatives, and any cash equity positions on
23 our books would have been there specifically to
24 hedge the delta risk on the book.

25 Can I tell you what that list of

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1 HIGHLY CONFIDENTIAL - Washtell
2 positions is or the composition of the
3 portfolio? No.

4 **Q. No process was undertaken at any point**
5 **to determine whether the price that was being**
6 **used for purposes of the opening balance sheet**
7 **acquisition did or did not match the price that**
8 **was being used for any existing positions; is**
9 **that correct?**

10 MR. THOMAS: Objection to form.

11 A. We applied the same policy framework
12 in which we operate. We applied the same
13 principles. We used the same data sources which
14 we would use to value our equity derivatives
15 portfolio.

16 Did we explicitly reconcile any
17 positions between what we were currently holding
18 and what was in this portfolio? No, but from a
19 policy and a framework perspective, as I said,
20 fair value requires that we mark everything to a
21 bid price. That's what we do within the firm.
22 That's what we were doing within the firm from
23 an equity derivatives perspective at that time.

24 You just, the way that you do it,
25 would do it for an equity derivative business is

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2 Just pause a minute so I can get my
3 objection in.

4 A. The firm has a global price testing
5 policy, has a global provisioning policy. This
6 is the framework in which we operate across all
7 desks, across all asset classes, and it means
8 all positions within the firm, all trading
9 positions within the firm are assessed in the
10 same way.

11 **Q. And in addition to a global price**
12 **testing policy and a global provisioning policy,**
13 **are there other policies and procedures specific**
14 **to the Equities IVC Group in place?**

15 A. Yes.

16 **Q. And could you identify the names of**
17 **those other existing policies and procedures?**

18 A. There is a global equities policy
19 application document for price testing.

20 **Q. And are there any others?**

21 A. There would be other procedural
22 methodology documents. I don't have the
23 specific names, but it would be more detailed in
24 terms of how procedures are performed,
25 calculations are done.

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2 not to split your positions out into individual
3 trades. It would be to look, at a portfolio
4 level, what are your portfolio risks that you
5 need to apply a bid/offer to, and that's the way
6 it would be assessed, which is slightly
7 different to here's an outright long cash equity
8 portfolio which clearly also, in line with our
9 policies, needs to be assessed for bid/offer.

10 So the framework in which we operate,
11 the policy which we apply, the reasoning and the
12 way we arrived at this price is consistent. All
13 I'm saying is, where we had an equity derivative
14 business rather than a cash equity business, the
15 way that you arrive at the appropriate fair
16 value for your portfolio is going to be
17 necessarily different.

18 **Q. If Barclays had no existing cash**
19 **equity business prior to the acquisition, under**
20 **what policies and procedures and guidelines did**
21 **your group go about independently valuing the**
22 **cash equity positions that were being acquired?**

23 MR. THOMAS: Objection.

24 A. We have a global --

25 MR. THOMAS: Objection to form.

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2 **Q. And the global equities policy that**
3 **you refer to, was that in existence at the time**
4 **of the acquisition?**

5 A. We certainly had a policy application
6 in place at the time. It's clearly been revised
7 since or reviewed and updated and things change.

8 **Q. And the policies and procedures that**
9 **would have been in place at the time of the**
10 **acquisition would have been reflective of the**
11 **prior name of your group, the --**

12 A. Equity Derivatives.

13 **Q. -- Equity Derivatives Group?**

14 A. Yes.

15 **Q. And those policies and procedures**
16 **would have been specific to equity derivatives;**
17 **is that correct?**

18 A. That's correct.

19 **Q. And were there any policies and**
20 **procedures in place at that time specific to the**
21 **cash equities?**

22 A. To the extent we did not have a cash
23 equity business, we did not have a policy
24 document for a cash equity business.

25 **Q. And --**

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A. We had a policy document for the equity derivative business.

Q. And how about -- I should ask, when you say "cash equities," what would that include?

A. That business would principally be involved in trading equities securities. That's listed equities. That could be preferred stock, that could be ADRs, depository receipts, that could be convertible bonds.

Q. Would it include equity-linked notes and warrants?

A. I wouldn't classify those specifically as cash equity products, necessarily.

Q. And what would you classify equity-linked notes and warrants as?

A. Equity-linked notes is more of a derivative.

Q. Did --

A. It's clearly a security the way that an equity is a security, but it has a derivative component normally, as a warrant has a derivative component. It's an option stock.

Q. And prior to the Lehman transaction,

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did Barclays own equity-linked notes and warrants for purposes other than hedging?

A. We certainly have an equity-linked note issuance program, so we issue equity-linked notes, yes. Warrants, I'm not sure.

(Recess; Time Noted: 10:44 A.M.)

(Time Noted: 10:57 A.M.)

BY MS. CARRERO:

Q. Earlier, you were telling me that you were involved with the valuation of the equity portfolio acquired from Lehman. When did the valuation process begin for you?

MR. THOMAS: Objection to form.

A. We first started looking at assets positions, securities in relation to this around the time of 9/22. I don't remember the exact date. The process of trying to achieve an opening balance sheet value was started at some point after that time and lasted for a period of months.

Q. Do you know who ultimately decided the value that would be used for purposes of the opening balance sheet?

MR. THOMAS: Objection to form.

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A. Do you mean valuation in relation to equity assets?

Q. I mean in relation to equity assets.

A. It's my understanding that the fair values that we used for the opening balance sheet calculation were those that we arrived at following ongoing internal discussion, review within valuations, as well as an extensive review process with PwC, our external auditors.

Q. It's your understanding that the values that your group calculated are the values that ultimately roll up to the opening balance sheet; is that correct?

A. That's my understanding.

Q. And were you involved in the valuation of any of the assets contemplated to be purchased from Lehman the week before the closing?

MR. THOMAS: Objection to form.

A. Could you repeat the question?

Q. Were you involved in any way with the valuation of assets to be purchased from Lehman prior to the closing of the transaction?

MR. THOMAS: Objection to form.

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A. I was not involved in any work prior to the closing of that transaction in relation to that transaction, to my knowledge.

Q. Are you aware that a significant portion of the assets were transferred to Barclays on September 18 as part of a Repurchase Agreement?

MR. THOMAS: Objection to form.

A. I'm not aware of the specifics of what was transferred and when or as to specifics of the deal. I was not involved.

(Exhibit 817, a document bearing Bates

Nos. BCI-EX-(S)-176597 through 176599, with attachment, marked for identification, as of this date.)

Q. Mr. Washtell, you have before you what has been marked Deposition Exhibit 817.

A. Yes.

Q. Would you take a moment and read it over.

A. Sure.

(Document review.)

A. Okay.

Q. If you'll turn your attention to the

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1 **HIGHLY CONFIDENTIAL - Washtell**
2 **correct?**

3 MR. THOMAS: Objection to form.
4 A. As of that time -- sorry. As of that
5 time, I don't recall, that's correct.

6 **Q. Any repurchase transaction, not just**
7 **the Lehman/Barclays one; is that correct?**

8 MR. THOMAS: Objection.

9 A. I don't recall at that point in time
10 being asked to review anything in relation to a
11 repurchase transaction.

12 **Q. When your group began the process of**
13 **valuing the equity portfolio that had been**
14 **transferred from Lehman to Barclays, did your**
15 **group have access to the marks at which those**
16 **positions were being held on Lehman's books at**
17 **the time?**

18 A. No.

19 MR. THOMAS: Objection to form.

20 Sorry.

21 A. I don't recall having access to data
22 Lehman Brothers' systems or books.

23 **Q. At the time that your group began its**
24 **valuation of the equity portfolio transferred**
25 **from Lehman to Barclays, did your group have**

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1 **HIGHLY CONFIDENTIAL - Washtell**
2 **access to the marks that Barclays' custodian had**
3 **ascribed to those positions in connection with**
4 **the Lehman/Barclays repurchase transaction on**
5 **September 18?**

6 A. I recall from the files that we
7 received and the data that we analyzed, we were
8 given a price source which was identified as
9 BoNY, to the extent BoNY was a custodian of the
10 repo.

11 **Q. And what did your group do with those**
12 **BoNY prices?**

13 A. Not a great deal. We were asked to
14 independently assess or price test the value of
15 the listing of securities, not to principally
16 assess whether a BoNY price was correct, but to
17 assess the fair value of a list of securities.
18 We would have done that by obtaining independent
19 sources as part of our normal practice.

20 **Q. Would a Lehman price or a BoNY price**
21 **be an example of another available price point**
22 **that could be used in a valuation of the**
23 **securities?**

24 MR. THOMAS: Objection to form.

25 A. The reason I would not use a BoNY

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1 **HIGHLY CONFIDENTIAL - Washtell**
2 **price from a file in assessing an independent**
3 **valuation of something is our job is to assess**
4 **it independently. In order to do that, I need**
5 **to understand what independent external data**
6 **sources I'm using, where they come from, and**
7 **what they represent.**

8 Now, a price in a file that says this
9 is the value BoNY has in a system, I have no
10 understanding of what that price represents. I
11 have no understanding of how BoNY derives that
12 price. I could say the same of Lehman Brothers.
13 I have no visibility on what that data is, so I
14 would not use it in making an independent
15 assessment.

16 **Q. Is it your understanding that no**
17 **securities are kept on Barclays' books at a**
18 **price that has been ascribed by its custodian,**
19 **BoNY?**

20 MR. THOMAS: Objection to form.

21 A. I'm not aware of anywhere that happens
22 within my agreement, within what I know of the
23 business. In our day-to-day monthly work, we
24 don't look at custodian values as part of our
25 price testing analysis.

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1 **HIGHLY CONFIDENTIAL - Washtell**
2 **Q. Earlier you had mentioned that there**
3 **were some illiquid equity positions within the**
4 **portfolio transferred; is that correct?**

5 A. Illiquid?

6 **Q. Yes.**

7 A. Correct.

8 **Q. For any illiquid equity securities**
9 **within the equity portfolio, where did your**
10 **group look to gather data for purposes of**
11 **marking those securities?**

12 A. We used the standard sources that we
13 would use within the firm to mark equities. So
14 we went principally to Reuters, being our main
15 source, looked for an exchange closing or last
16 price. In some cases, we may have referenced
17 Bloomberg. Potentially there are other sources.
18 I don't recall the full list.

19 **Q. For an illiquid equity security, it**
20 **didn't seem to make sense to look at the price**
21 **at which a trader familiar with the product who**
22 **had held it on his books had marked it at prior**
23 **to its transfer to Barclays?**

24 MR. THOMAS: Objection to form.

25 A. I couldn't ascribe any level of

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1 HIGHLY CONFIDENTIAL - Washtell
2 independence to that price.

3 Q. But you didn't consider it at all?

4 A. No.

5 MR. THOMAS: Objection to form.

6 A. No.

7 Q. Do you know if a number of the
8 illiquid equity securities that may have been
9 part of the equity portfolio transferred were
10 ultimately -- ultimately ended up on a trading
11 book at Barclays -- scratch that. Bad question.

12 Do you know if any former Lehman
13 traders that went over to Barclays after the
14 sale ended up with positions on their books that
15 they had previously owned while at Lehman prior
16 to the sale?

17 A. I don't know.

18 Q. But you would expect that there would
19 be former Lehman traders that went over to
20 Barclays and ran a book with similar positions
21 to what they had had on their books at Lehman;
22 is that correct?

23 MR. THOMAS: Objection. Foundation.

24 Asked and answered.

25 THE WITNESS: Do I need to answer

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2 that?

3 MR. THOMAS: Yes, if you can.

4 A. What was the question again? Sorry.

5 Q. You would expect that some of the
6 former Lehman traders that went over to Barclays
7 would end up with some of these positions that
8 had been transferred over on their book once
9 they arrive at Barclays; is that correct?

10 MR. THOMAS: Objection. Foundation.

11 Asked and answered.

12 A. It's not necessarily a
13 straightforward, reasonable assumption to make.
14 The positions would be risk-managed by the
15 business in the way they see fit, and I was not
16 privy to that information or that decision.

17 Q. I'm not asking about whether they were
18 risk-managed, and so maybe it's just a matter
19 of terminology.

20 A. Well, you're asking me where they were
21 booked.

22 MR. THOMAS: Let her finish.

23 Q. I'm asking whether a desk might have
24 on it some former Lehman employees that had
25 previously had primary responsibility for the

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1 HIGHLY CONFIDENTIAL - Washtell
2 assets while at Lehman and now again primary
3 responsibility for trading those assets while at
4 Barclays?

5 MR. THOMAS: Same objection.

6 A. Sorry. Could you just repeat that
7 again?

8 (Record read.)

9 A. There's nothing that I can confirm. I
10 don't know that was the case. I don't know what
11 role traders had at Lehman relative to what role
12 they now have at Barclays or what trading books
13 those assets have been booked in post the
14 acquisition. I could conjecture whether or not
15 that would be a reasonable thing.

16 Q. To the extent that Barclays, prior to
17 the acquisition, as you said before, did not
18 have a cash equity business, would you expect
19 that the people, immediately upon the
20 acquisition of those assets that would be
21 trading those assets, were coming over from
22 Lehman?

23 MR. THOMAS: Objection to form.

24 A. A group of traders, trading staff,
25 moved from Lehman to Barclays. It's my

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2 understanding not all staff did. I don't know
3 who did, who didn't, what their responsibilities
4 were before relative to after. It's not
5 something I'm aware of or was involved in.

6 Q. You had said before that in the
7 ordinary course of price testing, you would have
8 communication with the traders about pricing.

9 Is that not a source that you would
10 consult in the process of price testing?

11 MR. THOMAS: Objection to form.

12 A. As part of our normal process, as I
13 described, we would discuss our analysis with
14 the trading desk.

15 Q. And so --

16 A. I recall --

17 MR. THOMAS: Let him finish.

18 MS. CARRERO: I will. I thought he
19 was done.

20 A. I recall we may have had discussions
21 with the Barclays trading desk in London. I
22 don't recall having discussions with anyone from
23 Lehman trading in New York.

24 Q. What about any Lehman counterparts
25 at -- and their equivalent of IVC?

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A. As I said previously, some staff were engaged in obtaining data at my direction, but that was very much an operational thing, them responding to a request from me to obtain certain information.

Q. And do you know what sort of data was being requested?

A. Price data.

Q. So price data was being requested but then not being used, is that correct?

MR. THOMAS: Objection to form.

A. No, I'm not saying it wasn't being used. I'm saying I may have asked staff from the U.S. IVC team who were listed in the document you showed me earlier to source independent data. For example, Go and source me these prices from Bloomberg for this date, please," and that would have been done from an operational perspective to share the work amongst the global team at that point rather than me asking someone in London to do it. I would not have been asking for anything from a Lehman system. I don't recall ever asking for any information from Lehman's system.

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Q. So you're not familiar with a system called GFS?

MR. THOMAS: Objection to form.

A. Not in anything other than I've heard GFS before. I have no idea specifically what it does or is used for.

Q. Same question as with respect to the Bank of New York marks. With respect to the JPM marks that were available in connection with a September 17 repurchase agreement between Lehman and the Fed, were the JPM marks used in any way in equity IC -- IVC's valuation of the equity portfolio?

MR. THOMAS: Objection to form.

A. I don't recall using any JPMorgan marks in our analysis.

Q. Do you recall seeing those marks?

A. I don't recall seeing those marks.

Q. Mr. Washtell, I'm putting before you what has been marked as Deposition Exhibit 806B. Have you seen this document before?

A. Yes, I believe so.

Q. And you see it says, "Product Control, Price Testing Policy, date: May 2009"; is that

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correct?

A. That's what it says.

Q. Is this a policy that was put in place after the Lehman transaction?

A. The firm had a process and policy prior to the Lehman transaction. The date of this document suggests the version you have is after the transaction.

Q. But to your knowledge, there was a written policy in place dated at the time of the transaction; is that correct?

A. That's correct, and I assume you have the version controlling here somewhere. I'm not sure where, but ...

It doesn't help because it doesn't have a date. Yes, we had a process and policy in place prior to the Lehman transaction.

Q. And in this policy is a Central Price Testing guidance, correct?

A. It's a global, firm-wide policy.

Q. As opposed to a policy that is specific to just the Equity IVC Group, correct?

A. Any equity-specific documentation would be consistent with this policy, but this

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is a global, firm-wide cross-asset policy.

Q. You can put that one aside, and I'm going to give you what has been marked as Deposition Exhibit 805B.

Have you seen this document before?

A. Yes.

Q. And you see it says "Barclays Capital Provisioning Policy Statement, December 2008, Product Control"; is that correct?

A. That's what it says.

Q. And this policy is dated after the Lehman acquisition; is that correct?

A. That's correct.

Q. Was there a provisioning policy, a written provision policy statement in place at the time of the Lehman acquisition?

A. Yes.

Q. Do you know if it differs at all from this document?

A. I don't know that specifically.

Q. Were the bid/offer adjustments taken to any equity products taken pursuant to this policy in front of you which has been marked as Deposition Exhibit 805B?

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A. Any bid/offer adjustments that were taken would have been taken in line with this policy. This is the policy within which we operate within the firm.

Q. Do you know if the policy that existed prior to this was at all different and, if so, whether adjustments were taken with respect to this policy or an earlier policy?

A. At what time?

Q. For purposes of the acquisition balance sheet.

A. For purposes of --

Q. Which policy was followed, this December 2008 policy or its predecessor policy, if any policy at all?

A. The policy that was followed was the policy that would have been in place at the time of the acquisition.

Q. Could you turn to page 5. Would the bid/offer adjustments that were taken on any of the equity positions acquired for purposes of acquisition accounting been taken under 5, Bid/Offer Adjustments (Level 1: Price Testing)?"

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A. That's my understanding, yes, they would.

Q. You can put that aside.

Do you know if any of the equity positions that were transferred to Barclays on September 18 were hedged prior to the closing of the transaction?

MR. THOMAS: Objection to form.

A. I'm not aware of that. I have no knowledge of that.

Q. If any of the positions had been hedged prior to the closing of the transaction, would a bid/offer adjustment have been taken for any of those cash equity positions?

MR. THOMAS: Objection to form.

A. Could you repeat the question?

Q. If any of the positions that had been hedged prior to the closing of the transaction, would it be proper in those instances to take a bid/offer adjustment on those cash equity positions?

MR. THOMAS: Objection to form.

A. For what purposes? For the purposes of the opening balance sheet?

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Q. Let's start there, for the purposes of the opening balance sheet.

A. It's my understanding for the opening balance sheet we had, and I was provided, a position listing of securities which I was asked to arrive at a fair value. There was nothing in relation to positions that were hedged or not hedged or any other positions. They were just a position listing, a portfolio of securities for which we needed to derive an appropriate fair value.

Q. For other purposes, I guess for the next day's mark of those securities, if there had been a hedge for that security, would a bid/offer adjustment be applied to a cash equity position?

MR. THOMAS: Objection to form.

A. Are we talking about in the normal course of business?

Q. In the normal course of business.

A. And depends what we mean by "hedge."

You have a cash equity position. By "hedge" do you mean sell the position and you no longer have a position, or do you mean "hedge"

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by using some other financial instruments, be they futures, forwards, on indices or on stocks? It would --

Q. I mean --

A. -- depend.

Q. -- for example, how you earlier said a number of the cash equity positions that would have been in SOPHIS prior to the acquisition would not have had a bid/offer adjustment to them because they were hedging another position?

A. A derivative book, yes.

Q. A derivative book in that instance.

If any of the equity portfolio positions acquired from Lehman were hedged prior to the closing of the transaction, would they, for purposes of SOPHIS, have a bid/offer adjustment embedded in the mark?

MR. THOMAS: Objection to form.

A. Just to clarify, first of all, I don't have any knowledge of whether anything was traded to hedge anything over that time period. If a position was put into SOPHIS to act as a derivative hedge to some positions, it would be included in our standard procedures processes

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<p>1 HIGHLY CONFIDENTIAL - Washtell 2 for assessing bid/offer. 3 Q. I'm trying to understand what those 4 standard procedures are. Are those standard 5 procedures that if a cash equity is acting as a 6 hedge to, for instance, a derivatives portfolio, 7 no bid/offer adjustment would be taken in those 8 instances? 9 A. As I said previously, our cash equity 10 positions prior to the transaction were all 11 acting as hedges for the derivative portfolio, 12 in which case the application of fair value and 13 bid/offer adjustments for all that derivative 14 portfolio would be done on a portfolio level on 15 a risk-parameter basis. Stocks would not be 16 looked at in isolation. They would be looked at 17 as part of that portfolio. 18 Q. If it is an equity position that has 19 an observable market price on Bloomberg and 20 Reuters and it's acting as a hedge to a 21 derivatives portfolio, would there be a 22 bid/offer adjustment to that equity position or 23 not if you looked that CUSIP up in SOPHIS? 24 MR. THOMAS: Objection to form. 25 A. As I said, we would apply bid/offer TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell 2 provisions to the portfolio while looking at the 3 portfolio risk factors as a whole. To the 4 extent the stock position is there to delta 5 hedge the derivative portfolio, there would be a 6 zero or small residual delta risk position. 7 The principal risk factors through 8 which we would take a bid/offer adjustment would 9 be things like volatility or Vega exposure, 10 Epsilon or dividend exposure. This is the 11 standard practice the way we would assess fair 12 value and assess bid/offer provisions for a 13 derivative book. 14 Q. But you did not look at whether or not 15 the equity positions that were transferred from 16 Lehman to Barclays were hedged at the time that 17 you were -- that you undertook the valuation of 18 the securities; is that correct? 19 MR. THOMAS: Objection to form. 20 A. I did not look at whether the 21 portfolio was hedged in our analysis. 22 Q. Do you know, for purposes of what the 23 mark would have been in SOPHIS for any of the 24 equity positions on September 23, how those 25 marks were arrived at? TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - Washtell 2 MR. THOMAS: Objection to form. 3 A. What positions are we talking about? 4 Q. We're talking about the equity 5 positions that were transferred from Lehman to 6 Barclays. As I understand it, your group worked 7 on valuations for the opening day balance sheet; 8 is that correct? 9 A. That is correct. 10 Q. With respect to SOPHIS and the values 11 that would be entered in SOPHIS on September 22 12 or September 23, take your pick -- 13 A. Uh-huh. 14 Q. -- where do those values come from? 15 A. One point to clarify is I'm not sure 16 those positions were booked in SOPHIS on 17 September 22 or 23 or 24. It took a period of 18 time just to book the population into our 19 systems, and that was not -- it wasn't a short 20 period of time. It took some time because of 21 the difficulties of things like establishing 22 standard data, et cetera. 23 To the extent the positions were 24 booked in SOPHIS, they would be valued using 25 standard pricing feeds which SOPHIS receives on TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell 2 a daily basis, for example, from Reuters. 3 Q. And what sort of bid/offer adjustment 4 would be taken on the positions once they do get 5 booked into SOPHIS? 6 MR. THOMAS: Objection. 7 A. Bid/offer adjustments are something 8 that are assessed generally outside of the 9 trading systems on a periodic basis, be that 10 monthly, be that quarterly. It's an off-line, 11 separate calculation. 12 So on the day that you book a position 13 into a trading book, you don't book a bid/offer 14 reserve into the trading system with that 15 position. It's something that necessarily, 16 because of the way things operate, is done 17 separately. 18 Q. And what determines whether that 19 bid/offer reserve is booked on a monthly versus 20 a quarterly basis, for instance? 21 A. I think, generally, it would be done 22 on a monthly basis. 23 Q. For purposes of generating 24 month-end -- 25 A. Exactly. TSG Reporting - Worldwide 877-702-9580</p>

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Q. -- balance sheet?

And who generally determines what the appropriate bid/offer reserve to be booked is? Would that be your group?

A. We would certainly be involved, yes, along with the Product Control Group, along with the trading desk.

Q. When you say Product Control Group, you're distinguishing the IVC function of PCG from which other area of PCG?

A. For example, the Equities Product Control Team, who would be principally engaged in profit and loss reporting, for instance.

Q. And was it also the Equities Product Control Team's responsibility to generate any month-end equity-related balance sheets?

A. Depending for what purpose that information was needed, they may be involved.

Q. And for purposes of calculating the bid/offer reserve calculation for any of the assets, the equity assets purchased from Lehman, were the businesses or the Product Control Group involved in calculating the bid/offer reserves?

A. For the opening balance sheet?

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HIGHLY CONFIDENTIAL - Washtell

Q. For the opening balance sheet.

A. No, from my recollection, they were not involved.

Q. Was it your team alone, then, that was involved in calculating the bid/offer reserves taken for purposes of the opening balance sheet?

A. It was our team in conjunction with extensive discussion and review with PricewaterhouseCoopers, the external auditors.

Q. Does PricewaterhouseCoopers usually determine what Barclays' bid/offer reserve will be for equity positions?

A. No, but they review and audit all of our calculations, methodology assumptions and analysis and review all of those numbers as part of their normal course of business.

Q. And do they review all of the positions or do they just take a sample set of positions?

A. Depends what they are reviewing. They would review numbers, generally, in total. So they would look at totality of the balance bid/offer reserves.

Q. But here do you know whether they

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reviewed a sample set of the equity positions or if they reviewed all of them?

A. They were provided the data for all positions. I know they definitely did in-depth sample-based analysis as well.

Q. So you know of only a sample-based analysis, not an analysis of its entirety?

A. No, I said they were provided with all of the information for all positions. What they did with that specifically I'm sure is documented in their work papers.

Q. Do you know if any of the equity positions that were transferred from Lehman to Barclays were originally booked into Barclays' systems at the prices that its custodian, BoNY, had marked them at for purposes of the Lehman/Barclays repo?

A. I'm not aware of what prices they were booked into the system at. I don't recall.

Q. Do you have any reason to believe, if Barclays receives the equities on September 18 in connection with the repurchase transaction, that they would not have been free to trade those securities upon receipt?

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MR. THOMAS: Objection. Form.

A. I don't have any knowledge of that. I don't know.

Q. Do you know when Barclays was able to transfer -- sorry. Do you know when Barclays was able to trade any of the securities that were transferred to it from Lehman?

A. No, I'm not aware of that.

Q. So the tradability of the securities did not dictate the valuation date that you used for purposes of valuing the securities; is that correct?

MR. THOMAS: Objection to form.

A. It was not a consideration in my use of that date.

Q. And the cash equity positions were originally valued by your group using a valuation date of September 19; is that correct?

A. In the analysis, we --

MR. THOMAS: I'm sorry. Objection to form.

A. The analysis we performed on its opening balance sheet, as I said, occurred over a period of time, significant period of time,

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1 HIGHLY CONFIDENTIAL - Washtell
2 running to a few months. For those purposes, we
3 obtained prices for various dates.

4 We definitely had price data for 9/19
5 as well as 9/22 as well as other dates.

6 **Q. Ultimately, the price used for**
7 **purposes of acquisition accounting for the cash**
8 **equity positions is a 9/22 close date, is that**
9 **correct?**

10 A. That's correct.

11 **Q. Do you know at what point a change was**
12 **made from using a September 19 close date to a**
13 **September 22 close date?**

14 MR. THOMAS: Objection to form.
15 Assumes facts not in evidence.

16 **Q. Go ahead and answer.**

17 A. I'm not sure what change you're
18 talking about in terms of we initially did
19 something. You're suggesting we did something
20 on the 19th and then made a decision to change
21 on the 22nd.

22 In relation to the opening balance
23 sheet, it's my understanding the transaction
24 closed on the morning of September 22. We were
25 asked to value the portfolio as of the

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1 HIGHLY CONFIDENTIAL - Washtell
2 opening -- the opening balance sheet at the
3 closing of the transaction.

4 Given my understanding that it closed
5 on the morning of September 22, the most
6 reasonable time to assess the valuation of the
7 portfolio would be the close of business on
8 September 22.

9 **Q. It's your understanding that the**
10 **closing happened before the UK opened, correct?**

11 A. I don't know the exact time.

12 **Q. You understand it to be prior to the**
13 **close, correct, on September 22?**

14 MR. THOMAS: Objection to form.

15 The closing happened prior to the
16 close?

17 **Q. The close of the market. I'm sorry.**

18 A. The closing of the transaction, it's
19 my understanding, happened prior to the close of
20 the market on September 22.

21 **Q. And is your understanding that the**
22 **close of the transaction happened before the**
23 **open of the market in the U.S.?**

24 MR. THOMAS: Objection to form.
25 Foundation.

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1 HIGHLY CONFIDENTIAL - Washtell
2 A. That's not my understanding, and I
3 don't recall being told a specific time that the
4 close happened. I do recall that we had the
5 objective of trying to value a portfolio of
6 assets as at the open on September 22.

7 Now, the way that we would do that,
8 and the only reasonable way to do that, is to
9 look at the closing price information for
10 September 22 because you don't have reliable
11 opening information September 22.

12 **Q. Did you and your group undertake to**
13 **analyze the movement in the market, if any, from**
14 **close of business on September 19 to open of the**
15 **market on September 22?**

16 A. Could you just repeat that, sorry,
17 just so I have the dates?

18 **Q. Did you and your group undertake to**
19 **analyze the movement in the market, if any, from**
20 **the close of business on September 19 to the**
21 **open of business on September 22?**

22 MR. THOMAS: Objection to form.

23 A. In the market generally?

24 **Q. In the equities market.**

25 A. Do I recall specific analysis on that?

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1 HIGHLY CONFIDENTIAL - Washtell
2 **No.**

3 **Q. Did you or your group undertake an**
4 **analysis of what movement would have occurred**
5 **from September 22 open to the September 22 close**
6 **of business to determine what sort of market**
7 **movement there was and how that would affect the**
8 **price valuation exercise?**

9 MR. THOMAS: Objection to form.

10 A. To answer your second point, it
11 wouldn't have any effect on the analysis we did
12 or the valuation we arrived at, and the reason
13 for that is when we're being asked, which we
14 regularly are, to value positions at a certain
15 point in a day, it doesn't matter to us what
16 point of time during the day that transaction
17 happened because the only time we have reliable
18 information is the close of business. We don't
19 have reliable information at the open of
20 business.

21 So if I'm asked as part of my normal
22 course of work practice to value a position on a
23 given day, I'm going to default by looking at
24 the closing price information.

25 **Q. For months, though, you and your group**

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1 **HIGHLY CONFIDENTIAL - Washtell**
2 **were valuing it using a close of business**
3 **September 19th date; is that correct?**

4 MR. THOMAS: Objection to form.

5 A. As I said before, I know we analyzed
6 various days' data. I don't recall.

7 **Q. And do you recall who made the**
8 **decision to ultimately use a September 22 close**
9 **date as opposed to a September 19 closing date?**

10 A. I don't recall a specific person
11 making a specific decision. I recall that we
12 were instructed, for want of a better word, that
13 we should be trying to obtain a valuation for
14 the open of September 22.

15 As I say, I think the most reasonable
16 data point to look at for that is the close of
17 business September 22. I know -- my belief this
18 is something that was discussed extensively with
19 our auditors, which is something which they
20 supported and agreed was the appropriate, most
21 reasonable thing to do.

22 **Q. Are you aware that the closing date is**
23 **defined within the Asset Purchase Agreement**
24 **governing the transaction as 12:01 A.M. on**
25 **September 22?**

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1 **HIGHLY CONFIDENTIAL - Washtell**
2 available information. I'm not sure I quite
3 understand you're saying if a trade happened on
4 September 30th, would we use the opening price
5 on October 1 then?

6 **Q. Let's go with a different example. If**
7 **you are fair-valuing a position?**

8 A. Uh-huh.

9 **Q. Which is a willing buyer, a willing**
10 **seller concept; is that correct?**

11 A. Yes. Yes.

12 **Q. Do you consider that concept to have**
13 **embedded in it a concept that that willing buyer**
14 **and willing seller at that point in time have**
15 **certain information available to it that drives**
16 **the value that they are willing to buy and sell?**

17 MR. THOMAS: Objection to form.

18 A. Okay. Market participants have
19 information which will influence the level at
20 which they're willing to buy and sell at a given
21 point in time.

22 **Q. Does a willing buyer or seller have**
23 **access to information that's not available until**
24 **after that time, that point in time?**

25 MR. THOMAS: Objection to form.

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1 **HIGHLY CONFIDENTIAL - Washtell**

2 MR. THOMAS: Objection to form.

3 **A. I was not aware of that and I haven't**
4 **read that particular document. As I said, I**
5 **don't recall at the time being told of any**
6 **specific point in time other than the open. I**
7 **don't mean a -- I mean a time of day I don't**
8 **recall.**

9 **Q. In the ordinary course, would you use**
10 **pricing information from after the valuation**
11 **date for purposes of valuing a security?**

12 MR. THOMAS: Objection to form.

13 A. After the valuation date? So give me
14 a for example.

15 **Q. For example, if you were valuing a**
16 **security in a different time zone where the**
17 **valuation date would be -- let's pick September**
18 **30th, and you would have no or little**
19 **information other than from markets that**
20 **opened -- an opening price on October 1, let's**
21 **say.**

22 **Would you use that kind of ex post**
23 **information in a valuation exercise?**

24 MR. THOMAS: Objection to form.

25 A. We would otherwise consider the
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1 **HIGHLY CONFIDENTIAL - Washtell**

2 A. Does someone have available
3 information -- sorry. Does someone have
4 availability to information that's not available
5 at that point in time I think is your question?

6 **Q. Let's rephrase that to say if a**
7 **willing buyer or seller does not have**
8 **availability to information at the time, is it**
9 **fair to say that that would not be information**
10 **that they would be taking into consideration in**
11 **connection with the transaction?**

12 MR. THOMAS: Objection to form.

13 A. Yes, I think you've said the same
14 thing. The parties have access to information
15 that is available at a point in time. They
16 don't have access to information that's
17 available or for something that's going to
18 happen in two hours' time, so ...

19 **Q. So a willing buyer and seller at 12:01**
20 **A.M. on September 22nd would not have access to**
21 **information about what the closing price would**
22 **be on September 22; is that correct?**

23 MR. THOMAS: Objection to form.

24 A. Is it correct at 12:01 that a market
25 participant would not know the closing price for

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1 HIGHLY CONFIDENTIAL - Washtell
2 the close of business that day? That's your
3 question?
4 Q. Yes.
5 A. I think that's correct.
6 (Exhibit 818, a document bearing Bates
7 Nos. PwC-BarCap71528 through 71531, marked
8 for identification, as of this date.)
9 THE WITNESS: Can we take for about
10 two minutes?
11 (Recess; Time Noted: 12:16 P.M.
12 (Time Noted: 12:22 P.M.)
13 BY MS. CARRERO:
14 Q. Mr. Washtell, are you aware of what
15 the difference is in a valuation of the equity
16 portfolio using a September 19 date as opposed
17 to a September 22 date?
18 A. From a monetary perspective?
19 Q. From a monetary perspective, yes.
20 A. I'm not aware of the exact number. I
21 can't recall.
22 Q. Can you ballpark it for me?
23 MR. THOMAS: Objection to form.
24 A. Not reasonably.
25 Q. If I told you it was around 700
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1 HIGHLY CONFIDENTIAL - Washtell
2 million, would that sound about right?
3 MR. THOMAS: Objection to form.
4 A. Sounds a little high.
5 (Exhibit 819, a document bearing Bates
6 Nos. BCI-EX-(S)-218502 through 218503,
7 marked for identification, as of this date.)
8 (Document review.)
9 A. Okay.
10 Q. Mr. Washtell, have you had an
11 opportunity to read over Deposition Exhibit 819?
12 A. Yes.
13 Q. And you see that it is an e-mail from
14 your boss, Marcus Morton, dated December 12 to
15 PwC related to the valuation of the equity
16 portfolio; is that correct?
17 A. It looks to be an e-mail from Marcus
18 Morton to John Holloway tied to the Lehman
19 equity portfolio.
20 Q. And do you see where Mr. Morton
21 writes, "The legal deal closed on 9/19"?
22 A. Yes.
23 Q. Do you see where he then says, "The
24 first Lehman equity portfolio was received by
25 Barclays on September 22, to settle same day"?
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1 HIGHLY CONFIDENTIAL - Washtell
2 A. Yes, I see that.
3 Q. Do you have any reason to believe that
4 the equity positions in the Lehman/Barclays repo
5 were not delivered prior to September 22?
6 MR. THOMAS: Objection to form.
7 A. I have no knowledge of the delivery
8 specifics.
9 Q. So you have no knowledge whether they
10 were delivered on September 18 as opposed to
11 September 22?
12 MR. THOMAS: Objection to form.
13 A. I have no knowledge of the specific
14 delivery date.
15 Q. Do you see, if you turn to the second
16 page, the paragraph starting "combining these
17 together would reach an adjustment of at least
18 \$667 million at the least conservative
19 assumption, or \$799 million, using the full bid
20 to offer. This compares with our original
21 estimate of \$808 million"?
22 A. I see that, yes.
23 Q. Do you know what that refers to?
24 MR. THOMAS: Objection to form. Lack
25 of foundation.
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1 HIGHLY CONFIDENTIAL - Washtell
2 A. I don't recall what this refers to. I
3 wasn't on the e-mail, so I don't recall.
4 (Exhibit 820, a document bearing Bates
5 Nos. PwC-BarCapWP_00021953 through 22931,
6 marked for identification, as of this date.)
7 Q. Mr. Washtell, you have before you what
8 has been marked Deposition Exhibit 820?
9 A. Okay.
10 Q. Do you see that?
11 A. I do see it, yes.
12 Q. It's a big document, and it is titled
13 "[BoNY] PV of equity financial assets (UK)." Do
14 you see that?
15 A. I see that, yes.
16 Q. And do you see under "Tailored
17 Procedures" it says, "The PwC Barclays team in
18 the UK has been instructed to price test the
19 equity securities that were purchased from
20 Lehman as they have been engaged in the past to
21 price test the legacy Barclays equity
22 securities"?
23 A. I see that, yes.
24 Q. And do you see that this is a document
25 that has been produced by PwC based off of a tag
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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 at the bottom?</p> <p>3 MR. THOMAS: Objection to form.</p> <p>4 Q. I will just for the record say it's</p> <p>5 been produced by PwC, and the starting Bates</p> <p>6 number is PwC-BarCapWP_00021953.</p> <p>7 If I could have you turn to the page</p> <p>8 that is Bates-stamped 0021960. Actually, if you</p> <p>9 could start two pages before that at the page</p> <p>10 ending 958, and --</p> <p>11 A. And 960? Do you want me to read also?</p> <p>12 Q. Just if you could look over those</p> <p>13 three pages.</p> <p>14 (Document review.)</p> <p>15 A. Okay.</p> <p>16 Q. Do you see on the page ending 958,</p> <p>17 number 1, which is written in an e-mail dated</p> <p>18 January 7, 2009, and says, "Prices for equities</p> <p>19 are to be revised from those of 9/19 to 9/22"?</p> <p>20 A. Yes, I see that.</p> <p>21 Q. And then do you see on the page of the</p> <p>22 document ending 960, a chart that bottom line</p> <p>23 says, "Net Increase/(Decrease)" which totals a</p> <p>24 decrease of \$685,736,298?</p> <p>25 A. Yes, I see that.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 Q. Could you explain to me what this</p> <p>3 chart is totaling?</p> <p>4 MR. THOMAS: Objection. Form.</p> <p>5 Foundation.</p> <p>6 A. From looking at this, this looks like</p> <p>7 an analysis of the valuation of the equity</p> <p>8 portfolio at various points in time explaining</p> <p>9 the movement from 9/19 to 9/22.</p> <p>10 Q. And how much of a movement was there</p> <p>11 from 9/19 to 9/22 based off of this analysis?</p> <p>12 MR. THOMAS: Objection to form.</p> <p>13 Foundation.</p> <p>14 A. I see 274,242,335 plus 29,318,981,</p> <p>15 makes about 314.</p> <p>16 Q. So a total of --</p> <p>17 A. Just reading from this report.</p> <p>18 Q. Approximately 314 million would be a</p> <p>19 move from using 9/19 mid prices to the use of a</p> <p>20 9/22 mid price at close of business for both</p> <p>21 days; is that correct?</p> <p>22 MR. THOMAS: Objection to form. Lack</p> <p>23 of foundation.</p> <p>24 A. This report seems to be saying that</p> <p>25 market value changed equities 09/19 to 09/22,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 which I believe would be based on the last price</p> <p>3 because you have a bid/offer calculation below.</p> <p>4 That shows that that market value change for</p> <p>5 equities was 274 million, and that same market</p> <p>6 value change for converts was 29 million.</p> <p>7 Q. And where does the remainder of the</p> <p>8 decrease of approximately 685 million come from</p> <p>9 in addition to moving the valuation date from</p> <p>10 September 19 to September 22?</p> <p>11 MR. THOMAS: Objection to form.</p> <p>12 Foundation.</p> <p>13 A. I'm not sure because I can't see</p> <p>14 numbers that cast to 685 on this schedule.</p> <p>15 Q. Looking again at the line titled "Net</p> <p>16 Increase/(Decrease)"?</p> <p>17 A. Uh-huh.</p> <p>18 Q. Does that not --</p> <p>19 A. That seems to be comparing, what, 7993</p> <p>20 to 7611, but it's not quite doing that, is it?</p> <p>21 No, it's comparing 7611 with 8297, I</p> <p>22 guess.</p> <p>23 Q. Is it --</p> <p>24 A. It would appear to add in the 382</p> <p>25 under the "Bid/Offer Equities" line.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 Q. And what change is being made to the</p> <p>3 "Bid/Offer" line as a consequence of a change in</p> <p>4 valuation date from 9/19 close of business to</p> <p>5 9/22 close of business?</p> <p>6 MR. THOMAS: Objection to form.</p> <p>7 Foundation.</p> <p>8 A. I don't believe there is a change.</p> <p>9 That's just stating that that's the bid/offer</p> <p>10 for the equities as calculated, I'm assuming,</p> <p>11 for 9/22.</p> <p>12 Q. So the change in valuation date has no</p> <p>13 impact on the bid/offer adjustment that's being</p> <p>14 taken; is that correct?</p> <p>15 MR. THOMAS: Objection to form. Vague</p> <p>16 and foundation.</p> <p>17 A. When you say "change in valuation</p> <p>18 date," I don't recall assessing a bid/offer</p> <p>19 adjustment for 9/19.</p> <p>20 Q. Okay.</p> <p>21 A. I recall assessing the appropriate</p> <p>22 fair value of a bid/offer adjustment for 9/22.</p> <p>23 If you were to do that for 9/19, I don't know</p> <p>24 how different it would be.</p> <p>25 Q. Would you expect that --</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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A. If it would be different materially at all, I don't know.

Q. You don't know whether it would or would not be different if you were to calculate the bid/offer as of September 19 as opposed to as of September 22 close of business; is that correct?

A. It's not something that we looked at or considered, so I don't know.

Q. Would you expect it to be different if different dates were being used to calculate the bid/offer adjustment?

A. Potentially, but a lot of factors would go into determining that.

Q. Could you identify what factors would go into identifying if the date would play a role in affecting the bid/offer adjustment to be taken?

A. Well, given the position is the same, and that's going to be the largest driver of the bid/offer is the position on the book, and the only change would be how you interpret or calculate a bid/offer spread.

If you were to use a query data for

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9/19, could that lead you to slightly different spread calculations than you observed on 9/22? Potentially.

Q. Do you know if the market -- based on of the decrease in value from September 19 close to September 22 close, is it your understanding that the market was up on September 19?

MR. THOMAS: Objection. Form.

A. I don't know where the market is on September 19 and I don't know you can infer anything from this to suggest what the market did on September 19.

Q. You don't understand that the midpoint values calculated by your group for September 19 is approximately 300 -- I think you had added this as 314, but I think it might be actually 304 million, if you would take a look again at the --

A. You're correct. My arithmetic is out slightly.

Q. I can't take all the credit, but...

Wouldn't this chart suggest that the midpoint valuations that your group had calculated for the equity portfolio as of close

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of business 9/19 is approximately \$304 million higher than it was at close of business September 22?

MR. THOMAS: Objection. Form.

A. This suggests, based on the closing last price information that we had available, that the movement in the value of the positions between 9/19 and 9/22 was \$304 million.

Q. And so based off of a move of \$304 million, would you not say that the market for those positions you were valuing was up on September 19 as opposed to where it was by the close of business on September 22?

MR. THOMAS: Objection to form.

That's a different question.

A. I still think this number has no bearing on whether the market was up or down on September 19. It says nothing about where the market was on that day.

Q. For those positions?

A. Other than relative to 9/22. It doesn't tell you when the market is up or down on September 19, and that is how I understand your question. And your initial question was

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does this suggest the market is up on 9/19.

MR. THOMAS: And this is irrelevant to that?

THE WITNESS: Yes, and that's my point.

Q. I'm asking simply the price for these positions based on the mid value -- the midpoint values that your group came up with for 9/19 indicates that the price was better for those positions on 9/19 than they were by close of business September 22?

MR. THOMAS: That's not the question you asked. That's a different question.

A. Define "better." I mean --

Q. \$304 million better, higher on Friday, September 19; is that correct?

MR. THOMAS: Objection to form.

A. What this suggests to me, I'll paraphrase into my words maybe to clarify, is the valuation based on closing last prices on 9/19 was higher than the closing valuation based on closing last prices on 9/22 by \$304 million. Does that answer what ...

Q. Were you one of the principal or the

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principal liaison with PwC with respect to the equity portfolio acquired by Barclays from Lehman?

A. In terms of discussing the detailed analysis that they did, yes. The people they had -- Polly I think was the principal contact, Polly Ng, listed in the front of this document, and I was principally engaged with her, helping them in their assessment of the work we did in relation to the equity portfolio.

Q. Do you have any reason to believe that this chart that we were looking at on page Bates-stamped 1 -- sorry, Bates-stamped ending 960 does not accurately reflect the data that you had provided to PwC?

MR. THOMAS: Objection to form.

A. If this is an official work document from PwC, I have no reason to suggest it's incorrect in any way, but I have not seen this document before, so -- as in this PwC work paper.

Q. And if you turn to the page ending 57, which is starting at the page before that at 56, that's where the e-mail starts, there is an

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e-mail from Polly Ng dated January 8, 2009 to other individuals at PwC. Do you see that?

A. Halfway down page 56, that one?

Q. Yes.

A. Yes.

Q. Do you want to take a moment and read that e-mail?

A. Sure.

(Document review.)

A. Okay.

Q. Do you see the first line where it says, "Lynsey refers your request re Lehman equities valuation to me and I have briefly discussed with Mark"?

A. Yes.

Q. Do you expect that that reference to "Mark" is you?

MR. THOMAS: Object to form.

A. It's reasonable. I mean, I can't say for certain, but it's an assumption, reasonable assumption.

Q. And underneath it says, "Basically, as you mentioned, the valuation date of these Lehman equities had moved from 19th to 22nd

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September. There are around \$700 million fall in the value when comparing with 19th September due to two reasons: 1) MtM goes down for around \$300 million and 2) bid/offer reserve of \$400 million."

Do you see that?

A. Yes, I see that.

Q. Does that comport with your understanding of the movement when using a September 19 close of business day price as opposed to a September 22 close of business day price?

MR. THOMAS: Objection to form.

A. No, I think it's -- it's a confused point. I think it's saying there's a movement from September 19 to 22, and then there's the application of a bid/offer reserve. I think it's confusing those two points.

Q. But you have no reason to believe that the numbers are inaccurate, that the mark to market goes down for around \$300 million when using the 9/19 close of day prices as opposed to the 9/22 close of day prices; is that correct?

MR. THOMAS: Objection to form.

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A. I think the inverse of what you said, but I have no reason to believe this \$304 million number that's referenced here is incorrect.

Q. And when your group sought midpoint prices for September 19, what sources were used?

A. From my recollection, sources used to obtain closing or last price information for 9/19 would have been the same as those used for 9/22.

Q. And do you recall what those sources were?

A. I believe our principal source would be Reuters. The reason for that is it's the principal source of equity pricing information within Barclays Capital. In addition, we may have used Bloomberg, for instance, we may have used that, or other sources that were available to us. I don't recall specifically, but I expect the majority were Reuters.

Q. And do you know what Asset Control is?

A. So Asset Control is an internal market data warehouse within Barclays Capital which stores information that's obtained by the firm

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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 depend which files we're looking at.</p> <p>3 Q. Mr. Washtell, I'm handing you what has</p> <p>4 been previously marked as Deposition Exhibit</p> <p>5 641A. We've flagged some pages to make it</p> <p>6 easier for you to turn to. I have also flagged</p> <p>7 counsel's copy.</p> <p>8 MR. THOMAS: That's so thoughtful.</p> <p>9 Q. Mr. Washtell, you can turn to the --</p> <p>10 why don't we start at the first page. Do you</p> <p>11 see that the first page is an e-mail from Mr.</p> <p>12 Teague to Tal Litvin dated February 12, 2009,</p> <p>13 "Subject: Acquisition balance sheet"?</p> <p>14 A. Yes.</p> <p>15 Q. And do you see where it says, "The</p> <p>16 Lehman opening balance sheet is broken out into</p> <p>17 four distinct portfolios. The Lehman portfolio</p> <p>18 1 asset settled on 9/22. While the JPM</p> <p>19 Portfolio 3 assets legal settlement date was</p> <p>20 12/22. The following winzip contains List A and</p> <p>21 List B assets valued as of year-end that are</p> <p>22 expected to settle shortly. Here is the</p> <p>23 valuation methodology"?</p> <p>24 A. Yes, I see that.</p> <p>25 Q. Behind the e-mail are Excel</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 spreadsheets that were produced to us in a</p> <p>3 native version, and we have attempted to print</p> <p>4 them out and for purposes of questioning, but</p> <p>5 since they are lengthy, if you could turn to the</p> <p>6 first flagged page within, and this is a tab of</p> <p>7 an Excel workbook that was Bates-stamped</p> <p>8 BCI-EX-(S)-00213995, and the summary tab, if you</p> <p>9 just take a look at the summary tab.</p> <p>10 A. Okay.</p> <p>11 (Document review.)</p> <p>12 Q. Do you understand this summary to</p> <p>13 reflect the valuations undertaken by IVC in</p> <p>14 connection with putting together the opening</p> <p>15 balance sheet to reflect the Lehman transaction?</p> <p>16 MR. THOMAS: Objection to form. Lack</p> <p>17 of foundation.</p> <p>18 A. I don't recall this specific schedule.</p> <p>19 There's clearly a line on here for equities.</p> <p>20 There's clearly a PCG value, market value 9/22.</p> <p>21 Q. So you and your team didn't put</p> <p>22 together the equities portion, at least, of this</p> <p>23 spreadsheet?</p> <p>24 A. I believe we may --</p> <p>25 MR. THOMAS: Objection to form.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 A. I believe we may have done, but I</p> <p>3 didn't put together this file. This appears to</p> <p>4 be a summary file of all positions.</p> <p>5 Q. Do you know if the positions that your</p> <p>6 team was responsible for valuing would fall both</p> <p>7 in the row titled "Equities" as well as perhaps</p> <p>8 some in "PMTG," "PMTG II"?</p> <p>9 MR. THOMAS: Objection. Lack of</p> <p>10 foundation.</p> <p>11 A. I would interpret this as being the</p> <p>12 positions my team looked at were purely in the</p> <p>13 line "Equities."</p> <p>14 Q. And if you could turn to the next flag</p> <p>15 within the document, which should be another</p> <p>16 Excel tab within BCI-EX-(S)-00213995 titled</p> <p>17 "EQ2(2)." Take a moment to review and then let</p> <p>18 me know when you have finished.</p> <p>19 (Document review.)</p> <p>20 A. Okay.</p> <p>21 Q. Have you seen this document before?</p> <p>22 A. I have seen a schedule like this</p> <p>23 before.</p> <p>24 MR. THOMAS: Do you mean this one page</p> <p>25 as opposed to the whole exhibit?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 MS. CARRERO: I do mean this tab of</p> <p>3 the Excel workbook relating to the EQ2(2).</p> <p>4 Q. Can you tell me what the "PCG Value</p> <p>5 September 9" column totaling \$10,016,000,000</p> <p>6 reflects?</p> <p>7 MR. THOMAS: Objection to form.</p> <p>8 A. I believe that reflects the valuation</p> <p>9 of these positions based on closing price data</p> <p>10 that would have been obtained by my team for</p> <p>11 September 19.</p> <p>12 Q. And can you tell me what the "PCG</p> <p>13 Value September 22" column totaling</p> <p>14 \$9,725,000,000 reflects?</p> <p>15 MR. THOMAS: Objection to form.</p> <p>16 A. Is that the column next to it?</p> <p>17 Because I can't see anything on this.</p> <p>18 MS. CARRERO: We can go off the record</p> <p>19 for a second.</p> <p>20 (Pause in the proceedings.)</p> <p>21 BY MS. CARRERO:</p> <p>22 Q. Looking at the column labeled "PCG</p> <p>23 Value September 22," can you tell me what that</p> <p>24 column totaling \$9,725,000,000 reflects?</p> <p>25 MR. THOMAS: Objection to form.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 A. I don't see 9,725,000,000. Sorry.</p> <p>3 Q. In the column next to "PCG Value</p> <p>4 September 19," next to the total of</p> <p>5 10,016,000,000, what number --</p> <p>6 A. 9712.</p> <p>7 Q. What does that number reflect?</p> <p>8 MR. THOMAS: Objection to form.</p> <p>9 A. I believe that number would reflect</p> <p>10 the comparable value as of September 22, that</p> <p>11 is, using closing price from September 22.</p> <p>12 Q. And what does the column titled "PCG</p> <p>13 B/O of September 22" totaling \$382 million</p> <p>14 reflect?</p> <p>15 A. That would appear to reflect the</p> <p>16 bid/offer that was applied to the equity</p> <p>17 portfolio as of 9/22.</p> <p>18 Q. And what does "bid/offer" mean?</p> <p>19 A. In a general sense? Bid/offer spread.</p> <p>20 Q. In the sense of how it is used here.</p> <p>21 MR. THOMAS: Objection to form.</p> <p>22 A. "Bid/offer," as it is used here,</p> <p>23 represents an adjustment to get us to the</p> <p>24 appropriate fair market value, which in the case</p> <p>25 of a long equity portfolio is the bid value.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 That's quite clearly as defined in the</p> <p>3 accounting standards.</p> <p>4 Q. How is that bid/offer adjustment</p> <p>5 calculated to arrive at the \$382 million figure?</p> <p>6 MR. THOMAS: Objection to form.</p> <p>7 Foundation.</p> <p>8 A. Would you like a detailed explanation?</p> <p>9 It's -- it's a detailed calculation.</p> <p>10 Q. Before we get there, I just want to</p> <p>11 ask, it was your group that calculated the</p> <p>12 bid/offer adjustment that totaled \$382 million,</p> <p>13 correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Now, if you could go on and tell me</p> <p>16 how that bid/offer adjustment was calculated to</p> <p>17 arrive at \$382 million?</p> <p>18 MR. THOMAS: Objection to form.</p> <p>19 A. Due to the lack of available data, we</p> <p>20 calculated a portfolio level bid/offer spread to</p> <p>21 apply to the entire portfolio. Ideally, if you</p> <p>22 had position level data available for all</p> <p>23 positions, you would do this calculation on a</p> <p>24 position level, but given we were looking at</p> <p>25 this after the fact, some time after the fact,</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 we did not have that data available.</p> <p>3 The first step was to attempt to query</p> <p>4 bid/offer spread information for the portfolio</p> <p>5 as of 9/22. In doing that, using Reuters, which</p> <p>6 is our principal data source which we use within</p> <p>7 Barclays, we had coverage of something like 450</p> <p>8 to 500 names of a portfolio here which is</p> <p>9 something like 3500 names.</p> <p>10 The thing to know about that sample</p> <p>11 and why that sample is not representative of the</p> <p>12 portfolio and why you would not just, for</p> <p>13 instance, take an average of that sample, is</p> <p>14 that that spread information would have been</p> <p>15 available for the more liquid names within the</p> <p>16 portfolio.</p> <p>17 What that means is that spread</p> <p>18 information would have been much lower for those</p> <p>19 names than for the names that we could not</p> <p>20 observe at that time, so any average based on</p> <p>21 that level would be substantially lower than the</p> <p>22 true bid/offer that was applicable to the</p> <p>23 portfolio as of that date.</p> <p>24 Now, to adjust for that, we at some</p> <p>25 point in December have looked at a live market</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 bid/offer data where we have a much better</p> <p>3 coverage, and I think in that sample we were</p> <p>4 able to get something like 2,000, 2100 names,</p> <p>5 something like that, I don't know the exact</p> <p>6 number, but it covered a much larger proportion</p> <p>7 of the population. So from a market value</p> <p>8 perspective, it covered something like 80</p> <p>9 percent of the outstanding market value of the</p> <p>10 portfolio.</p> <p>11 That is a much better average because</p> <p>12 it covers much more of the portfolio, but then</p> <p>13 you have the issue that you're looking at an</p> <p>14 average of market data from December as opposed</p> <p>15 to September. So we've gone through a process</p> <p>16 to calculate, effectively, a rebasing or a</p> <p>17 benchmarking or a basis-type adjustment to</p> <p>18 understand how the markets moved between</p> <p>19 September 22 and I believe December 22 when we</p> <p>20 queried the larger population of data.</p> <p>21 On that basis, we come up with a ratio</p> <p>22 to reflect how the market generally has become</p> <p>23 more or less liquid, and in this case, it</p> <p>24 reflected the fact that spreads had become</p> <p>25 narrower in December as opposed to September.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 I think the factor we looked at was a</p> <p>3 little over 2, something like 2.2, that is to</p> <p>4 say the spreads that we observed for a specific</p> <p>5 position in September, where we had data also</p> <p>6 observable for those positions in December, the</p> <p>7 spreads we observed in September were larger by</p> <p>8 a factor of, on average, about 2.2.</p> <p>9 So we used that factor to then take</p> <p>10 our December average and estimate a rescale, a</p> <p>11 rebenchmarked, rebased average to apply to the</p> <p>12 portfolio in September. Having done that, we</p> <p>13 have arrived at the appropriate bid/offer spread</p> <p>14 to apply to the portfolio in September.</p> <p>15 Q. And when did this methodology come</p> <p>16 about? Was it in December at the time that you</p> <p>17 queried for the December live sample?</p> <p>18 MR. THOMAS: Objection to form.</p> <p>19 A. We were doing work on this before</p> <p>20 then, but it was very much an iterative process.</p> <p>21 So, as I said, as a first step, we looked to get</p> <p>22 as much information as we could from September</p> <p>23 and what average did that imply for us, and that</p> <p>24 was a first cut at the number.</p> <p>25 Q. And what --</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 A. It soon became apparent that, well,</p> <p>3 no, if we think about this, this isn't the most</p> <p>4 appropriate number because look at the stocks</p> <p>5 that are in our sample. It's the S&P 500 names</p> <p>6 or whatever that have been extremely liquid that</p> <p>7 have much tighter spreads. The sample where we</p> <p>8 don't have data is clearly the less liquid</p> <p>9 stuff, and if you go and look at live market</p> <p>10 spreads now, yes, there are much wider spreads.</p> <p>11 So it was an evolving process.</p> <p>12 Q. And between the acquisition date in</p> <p>13 September and December when you changed your</p> <p>14 bid/offer methodology, what were you seeing as</p> <p>15 the number to be taken as a bid/offer</p> <p>16 adjustment?</p> <p>17 MR. THOMAS: Objection to form.</p> <p>18 A. I'm not sure what you mean by the</p> <p>19 question in terms of what changed. I'm not --</p> <p>20 Q. I'm asking the percentage bid/offer</p> <p>21 adjustment, how did it compare to the one</p> <p>22 ultimately employed using the December live</p> <p>23 sample that was not generated until December or</p> <p>24 later when that data was obtained?</p> <p>25 MR. THOMAS: Objection.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 A. How did what compare to that? Sorry.</p> <p>3 Q. How did whatever methodology you were</p> <p>4 using to calculate the bid/offer adjustment</p> <p>5 prior to December differ from that which was</p> <p>6 ultimately used employing December data?</p> <p>7 MR. THOMAS: Objection to form.</p> <p>8 A. I don't recall at any point that we</p> <p>9 were using a different methodology. We did not</p> <p>10 calculate the bid/offer adjustment as of -- as</p> <p>11 of on the 22nd of September, we did not go and</p> <p>12 calculate a bid/offer adjustment and then at a</p> <p>13 later date revise that. That's not the way this</p> <p>14 happened.</p> <p>15 Q. But you're not telling me you waited</p> <p>16 until December to calculate a bid/offer</p> <p>17 adjustment, right?</p> <p>18 A. I'm saying the valuation, the opening</p> <p>19 balance sheet valuation, the work to come up</p> <p>20 with a fair value that was appropriate was</p> <p>21 undertaken over a period of time. That period</p> <p>22 of time was a few months.</p> <p>23 Q. But the data that was ultimately used</p> <p>24 is data that was obtained months after the</p> <p>25 acquisition; is that correct?</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 MR. THOMAS: Objection to form.</p> <p>3 A. To take into account the liquidity,</p> <p>4 the relative availability of data, the</p> <p>5 composition of the portfolio, we used all data</p> <p>6 available to us. That included referencing data</p> <p>7 where we could from September. It also included</p> <p>8 referencing data from December to come up with,</p> <p>9 as I've said, an effective benchmark or basis</p> <p>10 adjustment between those two dates.</p> <p>11 We could not query live data for</p> <p>12 September 22 because it was after the fact that</p> <p>13 we were trying to do this.</p> <p>14 Q. But the only available live data is</p> <p>15 data almost three months after the acquisition?</p> <p>16 MR. THOMAS: Objection to form.</p> <p>17 A. No, I'm saying there was a lot going</p> <p>18 on at this particular point in time, and</p> <p>19 clearly, you know, the sole responsibility of</p> <p>20 our group and what we were doing in that</p> <p>21 intervening period was not to calculate a</p> <p>22 bid/offer adjustment.</p> <p>23 Q. And so the calculation of a bid/offer</p> <p>24 adjustment was not something that was undertaken</p> <p>25 until December, at which point the only</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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2 **available live data was December data; is that**
3 **what you're saying?**

4 MR. THOMAS: Objection. Form.

5 A. I'm not sure exactly at what point we
6 first started calculating a bid/offer
7 adjustment. The first point or the point at
8 which we clearly decided we needed to
9 rebenchmark it to get a better estimate I
10 believe was sometime in December, and I recall
11 there were a couple of different sampling dates
12 in December that we used.

13 Q. How long is live data available for
14 after the live event?

15 A. Well, it's not -- it's a point in
16 time.

17 Q. So it's available only -- it must be
18 collected contemporaneously with its happening?

19 A. What --

20 MR. THOMAS: Objection.

21 A. What I would consider the definition
22 of "live data" is we go to Reuters during
23 trading hours and take a live snap of current
24 bid/offer in the market. 30 seconds later, you
25 can have a slightly different bid/offer and a

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2 slightly different set of live data. It's live.
3 It's ticking constantly. That's the definition
4 of it.

5 By doing that, you ensure the data
6 that you get represents a true bid/offer that's
7 quoted in the market at a particular time. So a
8 simultaneous bid and offer that's out there in
9 the market at one point in time rather than a
10 bid and offer that potentially, you know, are
11 being quoted at different times, which wouldn't
12 represent a true spread in the market.

13 Q. But how is a bid/offer in the market
14 three months after the Lehman acquisition more
15 representative of a true bid/offer than the data
16 that was available at the time of the actual
17 sale transaction?

18 MR. THOMAS: Objection. Form.

19 A. I think the distinction to make is the
20 data that was available at the time of the
21 transaction, if you could go and snap live
22 market data on September 22, you would do that
23 and that would be more representative, but
24 that's not something we were able to do because
25 we were looking at this after the fact.

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2 So the only information for 9/22 that
3 you could get is the closing bid-ask data, and
4 that's not available for a very wide proportion
5 of stocks. It was only available for I think I
6 said 450 or so stocks, and that population of
7 450 stocks represents serious selection bias if
8 you're trying to use that as a sample to be an
9 indicator for the spread you should apply to
10 your population because it represents the most
11 liquid names within the sample.

12 So it would lead to a significant
13 understatement of any bid/offer spread that
14 would apply to the portfolio. The only
15 reasonable way to get around that was to look at
16 live market data that we had available and try
17 to do some sort of rebasing between the dates.

18 Q. Do you have any idea how the December
19 snapshot of live data would compare to what a
20 live snapshot would have looked like in
21 September?

22 A. We have estimated based on the data
23 that we had available. So anywhere we had, for
24 the sample of positions where we had a closing
25 spread for 9/22, we compared that spread to the

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2 live spread we had in December. So we're
3 comparing like for like the same name, and we're
4 saying for this stock what was the bid/offer
5 spread in September, what was the bid/offer
6 spread in December, and on that basis we can
7 calculate ratio of how spreads on average have
8 moved between the two dates. And that gives us
9 this ratio of this factor of something like 2.2.
10 That is to say they were narrower by that factor
11 in December than they were in September.

12 Q. Putting before you what has been
13 marked as Deposition Exhibit 824.

14 (Exhibit 824, a document bearing Bates
15 Nos. BCI-EX-00255172, with attachment,
16 marked for identification, as of this date.)

17 Q. Have you had a chance to look it over?

18 A. Yes. Quite helpfully describes what I
19 just said.

20 Q. So Deposition Exhibit 824, which is
21 Bates-stamped BCI-EX-00255172, the first page,
22 is an Excel spreadsheet that we have printed
23 out, and if you would turn to the summary page,
24 and look at that "Implied Provision" line
25 totaling \$382,174,982, do you see that?

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A. Yes.

Q. Does that tie out to the previous document we were looking at, Deposition 641, the bid/offer, the PCG B/O September 22 total of 382 million?

A. Yes, it would appear to be the same number.

Q. And does the 8,852,000,000 number listed as total asset value reflect the total of tested and untested equities?

MR. THOMAS: Objection to form.

A. I would assume so.

Q. And the use of December 18 live data as opposed to any other date in December is because that's the date the decision was made to go out and take a snapshot of live data; is that correct?

A. I believe we took a snapshot on a few different days in December. They were all broadly representative and similar. So December 18 was the day that we chose. I don't recall exactly why that day was chosen.

Q. Do you recall what other dates live snapshots were taken?

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A. No, not specifically.

Q. Were live snapshots taken at different times of the day?

A. I believe they would have been.

Q. And who ultimately made the decision as to which live snapshot to use for the bid/offer calculation?

A. That would have been taken by myself in conjunction with other people, other members of the team.

Q. If you turn to the page behind that's reflective of the Excel tab titled all data.

A. Okay.

Q. Can you explain why only approximately 400 CUSIPs have a reported bid-ask spread on September 22 and approximately 2000 have a reported bid-ask spread on December 18, or tell me that that's what you have already explained?

A. Okay. That's kind of what I've explained, I guess. It's not the last data that we had for 9/22.

Q. And could you explain the process again of how the data from December was backdated to the September date?

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MR. THOMAS: Objection to form.

A. For the population of positions where we had spread data available on both observation dates, we calculated a ratio for a relative change I believe as it's defined on the spreadsheet. We then looked at the average of those changes across that sample of 400 or so names where data was available for both, and we have used that as an indication of how market bid/offer spreads have changed between those two dates.

Q. And has this methodology of backdating a bid/offer adjustment ever been employed by Barclays before?

MR. THOMAS: Objection to the form. Misstates the testimony.

A. We apply bid/offer provisions to the portfolio. We applied similar techniques of averaging to calculate spreads that are applicable for those bid/offer adjustments, and we do that as part of our ongoing function in our role.

Q. Does the provisioning policy that was in place at the time specifically provide for

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calculating bid/offer adjustments based on future data and then backdating it to a date prior?

MR. THOMAS: Objection. Form. Mischaracterizes the testimony.

A. I don't believe, to answer your question, the bid/offer -- sorry, the provisioning policy mentions anything in relation to backdating.

What we did in this example is the most reasonable thing to do to achieve an appropriate estimate of the bid/offer provision on the portfolio as of that point in time.

Using the information we had available, it would have been inappropriate to rely purely on the September spread information because it represented a biased sample, a non-representative sample. It would have significantly understated the true bid/offer on the portfolio at that time.

So it would have been incorrect to either not calculate a bid/offer because we didn't have the data or to calculate based on a sample of data which is not representative of

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2 the population. We needed to make reasonable
3 judgments to get to an appropriate bid/offer
4 spread based on available data we had at the
5 time that we were doing this, and that's what we
6 did.

7 And we believe that gets us to the
8 best estimate, the most reasonable estimate of
9 the appropriate fair value.

10 **Q. Why did it take three months from the**
11 **sale transaction to determine that what had**
12 **previously been pulled was inadequate?**

13 MR. THOMAS: Objection to form.

14 A. As I said before, we didn't spend
15 three months looking at the bid/offer
16 calculation. We did not -- or, I did not start
17 actively calculating an opening balance sheet
18 value as of 9/22 and then spend three months.
19 There was a lot of other stuff happening at this
20 point in time.

21 So it's not a case of, you know, we
22 spent three months and it took us three months
23 to determine that this was the appropriate
24 course of action.

25 **Q. This bid/offer methodology totaled**

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2 **almost \$400 million, which you would agree is**
3 **not inconsequential, correct?**

4 A. It's definitely not inconsequential.

5 **Q. And do you recall what amount of the**
6 **previous data using the 400 or so observable**
7 **data points for September would have yielded?**

8 MR. THOMAS: Objection to form of the
9 question. Vague.

10 A. I don't recall the exact number, no.

11 **Q. And do you recall what the average --**
12 **let me rephrase the question.**

13 **Looking at the numbers on the summary**
14 **page again --**

15 A. Yes.

16 **Q. -- if you could walk me through where**
17 **it says average spread from December 18 data,**
18 **1.93 percent?**

19 A. Yes.

20 **Q. And what is that 1.93 percent**
21 **reflective of?**

22 A. It's reflective of the average spread
23 from December 19 data, so the live data that we
24 created for bid-ask spreads as of December 18.
25 That's the average. It's described above how

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2 it's calculated, excluding data above 50 percent
3 spread.

4 **Q. What is the 2.3 next to average ratio**
5 **of spreads, September to December?**

6 A. 2.23?

7 **Q. Sorry, 2.23, yes.**

8 A. Is for the 400 observations, 400 or so
9 observations where we had data for both dates.
10 As I've described, that represents the relative
11 change or ratio on those positions between those
12 two dates.

13 **Q. So 2.23 is the ratio that was**
14 **calculated?**

15 A. Yes.

16 **Q. And can you tell me what the 4.32**
17 **percent number next to "Applied Sep. Average**
18 **Spread" is?**

19 A. I believe that's just the
20 multiplication of the previous two numbers, so
21 that represents the December spread, which
22 covers most of the population, rescaled based on
23 the ratio, to give us an approximate September
24 spread.

25 **Q. So is the 4.32 percent number what is**

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2 **applied in order to generate the \$382 million**
3 **number?**

4 A. That's correct.

5 **Q. And it's applied to which universe of**
6 **equities within the equity portfolio that you**
7 **covered?**

8 A. Everything that's not a convertible
9 bond, I believe, would have been included.

10 **Q. So even for the 400 CUSIPs for which**
11 **you did have data as of September, the**
12 **backdating from December/September calculated**
13 **spread was applied; is that correct?**

14 MR. THOMAS: Objection to form.

15 Mischaracterizes the testimony.

16 A. This spread was applied to all of the
17 positions, including those positions where we
18 had a spread observable from September. The
19 reason for that is that we're applying an
20 average methodology here. The reason we're
21 applying an average methodology is for a
22 significant portion of the portfolio we just did
23 not have spread information available.

24 So for, I think reading from this,
25 approximately 14 percent of the portfolio, which

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value to remove the impact of market activity
during the day on September 22?

A. Can you say that again?

Q. Was any attempt made to adjust the
value to remove the impact of market activity
over the course of the day on September 22?

A. What do you mean by "market activity"
in that sense?

Q. Market movements to any of the CUSIPs
that were within the portfolio being valued in
the "Total Equities and Convertibles" row using
a 9/22 close price.

A. No, I believe this represents the
closing market value as of 9/22.

Q. And this would be the number that
would roll into Barclays' acquisition balance
sheet; is that correct?

A. I believe the number that would roll
into Barclays' acquisition balance sheet would
also reflect the bid/offer, which is in the
column next to it.

Q. And what's the total of that?

A. So I think that the second "PCG Value
Sep. 22" column.

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Q. And what would the total be that would
roll into the acquisition balance sheet for the
equities and convertibles?

MR. THOMAS: Objection to form.

A. Taking as read from this, because I
can't remember the numbers, I'm not familiar
with the actual final document, 9.33 billion is
the number here.

Q. Did you or your group at your
direction seek to obtain any market information
from the foreign markets and indices that would
have been available between close of business on
September 19 and the September 22 opening of the
market?

A. Just to clarify, you're saying in
relation to the U.S. close from Sep. 19 to the
U.S. Open on Sep. 22 did we look at what you
call foreign markets? You mean non-U.S., is
that --

Q. Non-U.S. would be one way of looking
at it, but we could also say from UK close to UK
open on the 19th to the 22nd.

A. Okay.

Q. Were any, any data points collected

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and analyzed in determining the move in the
market from September 19 to September 22?

A. From my recollection, they were not.

Q. Your group was also responsible for
valuing convertibles, correct?

A. That's correct.

Q. And what would be included in the
convertibles category?

A. This would principally be convertible
bonds. I believe it may have included some
convertible preferred securities as well.

Q. And do you know what the distinction
is between tested and untested convertibles?

A. "Tested" would imply where we can
obtain an independent market data quote.
"Untested" would imply that we could not do
that.

Q. And why would there be no bid/offer
adjustment for convertible securities?

A. The price information that we obtained
for convertible securities would be in a
slightly different format, so we would
automatically get a bid and an ask and so we
would mark to the bid. Therefore, no need to

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take an adjustment just because of the data that
we get.

Q. And where does that data come from?

A. I believe most of the convertible bond
data would have been sourced through Bloomberg
and would represent broker quotes, market
quotes, indications from interdealer brokers,
which would be in line with our standard
practice for how we value convertible bonds and
price test convertible bonds on an ongoing
basis.

Q. Was your group responsible for valuing
equity-linked notes and warrants?

A. Yes. As listed on here, yes.

Q. And what would fall under the category
"Untested Lehman Issued ELNs"?

MR. THOMAS: Objection to form.

A. I can't recall exactly what's in each
of these categories, but two categories here,
Lehman issued ELNs and warrants would both
represent some form of Lehman paper.

Q. And "untested," does it have a similar
meaning as with the convertible bonds, meaning
that there would be no observable market price?

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A. That would be correct, yes.

Q. When valuing the Lehman-issued ELNs or the Lehman-issued warrants, did you or your group look at the marks in existence from Bank of New York or JPM or Lehman?

A. I don't recall looking at them in any detail.

Q. Do you know what the column labeled "BoNY September 18" references?

A. I believe that would reference the valuation as of the BoNY prices for September 18, just reading the column.

Q. And so the BoNY price for the untested Lehman-issued warrants would have been \$178 million; is that correct?

A. That's how I read this, yes.

Q. And the BoNY price for the untested Lehman-issued ELNs, \$25 million?

MR. THOMAS: Objection to form. Foundation.

A. Again, that's how I would read this, yes.

Q. And do you know why no value is attributed to the Lehman-issued ELNs or the

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Lehman-issued warrants by Barclays?

MR. THOMAS: Are we still talking about Movants' Trial Exhibit 143?

MS. CARRERO: We're talking about Deposition Exhibit 641A.

MR. THOMAS: Yes.

MS. CARRERO: Which is --

MR. THOMAS: Which? The version you gave us is Movants 143. So objection.

MS. CARRERO: It's the official marked deposition exhibit that is in front of the witness right now.

MR. THOMAS: 641A?

MS. CARRERO: 641A.

MR. THOMAS: Yes. I'm just confirming that the question is, again, about this document. So, objection, lack of foundation.

MS. CARRERO: If you'd like, I can pull out the correspondence from your colleagues that describes exactly what this document is and has been represented to us as the document that's --

MR. THOMAS: The objection is just TSG Reporting - Worldwide 877-702-9580

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based on what this witness -- you're asking this witness to say what this document says, and he's, I think, been carefully answering that, as he reads this, that's what he thinks it says, but I don't think he actually prepared this document and I don't think you have established a foundation for him knowing exactly what these figures are. But that's just the objection I'm reserving.

BY MS. CARRERO:

Q. If your group was responsible for valuing the equity portfolio, would anybody else have been able to supply the data that populated this table, if not your group?

A. I don't believe they would for the columns that say "PCG Market Value," but I certainly didn't prepare this schedule.

Q. And that's fine. Was it your group who valued the untested Lehman-issued ELNs and the untested Lehman-issued warrants at no value as reflected on this chart, whether or not you prepared it or not?

MR. THOMAS: Objection to form.

A. Yes, that's correct.

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Q. And what was the basis for the decision to value the untested Lehman-issued ELNs and untested Lehman-issued warrants at zero?

A. The warrants, a warrant, by definition, is just an option in stock. It's a Lehman-issued warrant. That means it's an option on Lehman's stock. At this point in time, I don't believe Lehman's stock had any value. So ascribing any value other than zero to these warrants would have been the incorrect, nonsensical thing to do.

Likewise, the Lehman-issued ELNs represent some equity-linked Lehman-issued paper. For similar reasons given, what was happening in the Lehman bankruptcy at the time, we -- and the fact we could not obviously source any market data for these things, we deemed it most appropriate to value them at zero.

Q. And is that based off an assumption that the notes and the warrants would end up being unenforceable?

A. I don't think it's based on an assumption they would be unenforceable, but if a TSG Reporting - Worldwide 877-702-9580

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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 warrant is issued by Lehman Brothers on its own</p> <p>3 stock, and you enforce exercise of that warrant,</p> <p>4 what do you actually receive if Lehman's stock</p> <p>5 is now worthless and it doesn't exist? I'm not</p> <p>6 sure what you would achieve from that. I'm not</p> <p>7 sure you would ever ascribe any value to that or</p> <p>8 get any value from that.</p> <p>9 Q. And do you know if ultimately Barclays</p> <p>10 has received any value from the Lehman-issued</p> <p>11 ELNs or the Lehman-issued warrants?</p> <p>12 A. I'm not aware of that, no.</p> <p>13 Q. And where would you go if you wanted</p> <p>14 to determine whether or not the Lehman-issued</p> <p>15 ELNs or the Lehman-issued warrants had been</p> <p>16 marked up later or redeemed in some way for</p> <p>17 value?</p> <p>18 A. Sorry, where would I go? What --</p> <p>19 Q. Where --</p> <p>20 A. Who would I ask?</p> <p>21 Q. Who would you ask?</p> <p>22 A. At this point, I don't know. I don't</p> <p>23 know if the position is -- I don't know the</p> <p>24 answer to that.</p> <p>25 Q. What system within Barclays or report</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 that is generated would have information on a</p> <p>3 CUSIP and what ends up happening on a day-to-day</p> <p>4 basis to the mark?</p> <p>5 A. In these cases, where we valued them</p> <p>6 at zero, I don't know what system they would</p> <p>7 have been booked in and whether they would still</p> <p>8 be in a system somewhere. I don't know the</p> <p>9 answer to that.</p> <p>10 Q. Assuming they're in a system with</p> <p>11 other equity securities that were booked into</p> <p>12 the system?</p> <p>13 A. At this point in time now?</p> <p>14 Q. At this point in time now. If you</p> <p>15 wanted to query whether Barclays still held the</p> <p>16 position and if Barclays had sold it, at what</p> <p>17 point it was sold, or if Barclays had redeemed</p> <p>18 it and the value it redeemed it --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- where would you look?</p> <p>21 A. I would look, I guess, in whatever</p> <p>22 settlement system is most appropriate, and where</p> <p>23 this was actually booked, where it would have</p> <p>24 settled, and where any corporate actions or</p> <p>25 otherwise would have taken place and been</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 recognized, if any cash was received. I'm not</p> <p>3 aware of that happening, as I said.</p> <p>4 Q. So there are a number of settlement</p> <p>5 systems within Barclays, depending on the type</p> <p>6 of security, and that system would allow you to</p> <p>7 see what sort of corporate actions have taken</p> <p>8 place with respect to that CUSIP?</p> <p>9 A. I would assume that information would</p> <p>10 be available from our systems. I've never gone</p> <p>11 in and asked to query that information, but if</p> <p>12 you're asking how I would solve the problem,</p> <p>13 should I have to solve it, to find out some</p> <p>14 information, I would start there.</p> <p>15 Q. Above the untested Lehman-issued ELNs</p> <p>16 row, there's a row for untested warrants, which</p> <p>17 is also valued at zero. Do you know why those</p> <p>18 warrants were valued at zero?</p> <p>19 A. Given we deem the BoNY information</p> <p>20 unreliable for the Lehman-issued warrants and</p> <p>21 the ELNs, as we've just discussed, and I think</p> <p>22 given if you look at the line above that where</p> <p>23 it says "untested equities," where we have shown</p> <p>24 the BoNY value to be significantly wrong, so 9</p> <p>25 million of equities per the BoNY files were</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 actually only worth 1 million per our</p> <p>3 independent data sources. We have arrived at a</p> <p>4 reasonable conclusion, which is that we don't</p> <p>5 want to rely on the values in the BoNY file. We</p> <p>6 don't think they're reasonable. As you can see,</p> <p>7 the 9 million goes down to almost 1. So, in the</p> <p>8 absence of data, rather than go with the BoNY</p> <p>9 value, we have ascribed them a zero value.</p> <p>10 Q. And for the tested -- sorry, returning</p> <p>11 to the untested equities?</p> <p>12 A. Yes.</p> <p>13 Q. So they gave it 9 million, you say</p> <p>14 it's 1 million?</p> <p>15 A. Yes.</p> <p>16 Q. And do you know what -- is it within</p> <p>17 that "Untested Equities" line?</p> <p>18 A. No, I don't recall specifically what's</p> <p>19 in there. It would have been illiquid equities.</p> <p>20 Q. And --</p> <p>21 A. Generally, where we have classified it</p> <p>22 as untested and are unable through our, you</p> <p>23 know, normal course of business extensive</p> <p>24 sourcing external data were unable to source a</p> <p>25 data point, I would be very wary of considering</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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2 the, you know, a data point from a bank like
3 BoNY to be reliable. Because if I cannot source
4 external data reliably, I don't see why BoNY
5 should be able to source external data reliably.

6 **Q. But in the ordinary course with an**
7 **illiquid security, you would, generally**
8 **speaking, start with a trader mark when you**
9 **would undertake price testing of that illiquid**
10 **security; is that correct?**

11 A. That's correct, in our normal course
12 of business.

13 **Q. And here you told us earlier that you**
14 **spoke to no one at Lehman and never looked at**
15 **the Lehman price in valuing the securities**
16 **within the equity portfolio; is that correct?**

17 MR. THOMAS: Objection to form.

18 A. Say that again. I --

19 **Q. Earlier we had discussed whether or**
20 **not you had access to Lehman data related to**
21 **illiquid positions and whether you had looked at**
22 **that and considered it in your valuation or**
23 **whether you had spoken to any former Lehman**
24 **traders that have come over to Barclays who had**
25 **familiarity with positions, and you said no; is**

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2 **that correct?**

3 A. That's correct. We did not discuss
4 with ex-Lehman traders, and I do not recall that
5 we looked at prices in the Lehman systems.

6 **Q. And so for illiquid securities where I**
7 **take it you're considering them illiquid because**
8 **there's not as much observable market data out**
9 **there as other securities; is that correct?**

10 A. Yes, illiquid, by illiquid, we would
11 say there's either little or, in some cases, no
12 market data available.

13 **Q. Your group doesn't take into**
14 **consideration either -- two available data**
15 **points, the Lehman data or the BoNY data; is**
16 **that correct?**

17 MR. THOMAS: Objection to form.

18 A. The BoNY data, as you can see, for
19 Lehman-issued ELNs and Lehman-issued warrants is
20 clearly wrong.

21 **Q. It's not clearly wrong, necessarily;**
22 **it's just not used by you; is that correct?**

23 MR. THOMAS: Objection to form.

24 A. I don't -- I don't think anyone at
25 that point in time would say \$178 million is the

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2 appropriate valuation for Lehman-issued
3 warrants, for an option on Lehman's stock, which
4 is now worthless because the company has gone
5 bankrupt.

6 It's not like a, you know, a creditor
7 claim or a bond or -- it's stock, which I
8 believe when a company goes bankrupt becomes
9 worthless. If you price an option and put a
10 zero stock price into it, you're going to get a
11 zero price.

12 So those warrants, which are just
13 options on Lehman's stock, don't have any value.
14 I don't see how they can have any value. I
15 don't see how anyone could reasonably argue they
16 have value. I definitely don't see how Bank of
17 New York could argue they're worth \$178 million.
18 That suggests to me they have some kind of stale
19 data price feeds.

20 This price feed from September 18,
21 which is, what, three days after Lehman declared
22 bankruptcy, still has \$178 million of value
23 ascribed to positions which, by definition of
24 what they are and what's happened in the market
25 that week three days earlier, cannot have any

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2 value at that point.

3 That to me suggests, as a data source,
4 BoNY is highly questionable for anything that's
5 illiquid. It suggests to me they're not doing
6 any data integrity checks before sending this
7 information out.

8 **Q. Does Barclays still use BoNY as its**
9 **custodian bank?**

10 MR. THOMAS: Objection to form.

11 A. I don't know.

12 **Q. You're not aware of Barclays switching**
13 **custodian banks since the Lehman transaction,**
14 **are you?**

15 A. I'm not aware, but I wouldn't be aware
16 of that. I have no reason to be aware of that.

17 **Q. Are you aware that Bank of New York is**
18 **one of the largest, if not the largest,**
19 **tri-party repo custodian in the country?**

20 A. If you tell me they are, I would
21 believe you.

22 **Q. And are you aware that they value**
23 **trillions of dollars worth of securities daily**
24 **in connection with their function as tri-party**
25 **repo custodians?**

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MR. THOMAS: Objection to form.

A. Again, if you tell me that's what they do, then I wouldn't disagree with you. I would question what those valuations mean and what they're for, but ...

Q. Do you have any role in calculating the performance of any of the securities that were transferred through the Lehman sale?

A. The performance? What do you mean by the "performance"?

Q. The performance of any of the assets subsequent to the transfer from Lehman to Barclays.

A. No, that's not something I was involved in.

Q. The P&L function would be handled through another part of PCG; is that correct?

A. That's correct.

Q. In December of 2008, there was a settlement with JPMorgan, and another set of securities were transferred which are referenced as the JPM inventory.

If you're okay with that terminology, we'll go with the "JPM inventory" for the TSG Reporting - Worldwide 877-702-9580

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securities transferred in December 2008. Is that okay?

A. That's fine with me.

Q. Okay. Did you have any role in valuing securities that were transferred from Lehman or from -- I'm sorry, from JPM to Barclays in December of 2008?

A. I don't recall specifically. It's quite possible that we did, but I don't recall the specific details.

Q. My question for you really is whether or not there were any equities that your group had responsibility for valuing that came over through the settlement in December of 2008?

A. I can't recall any specifically. I can't say unequivocally no, but I can't recall any.

Q. If you would turn to -- I think it will be the third flag in Deposition Exhibit 641A. Do you see where it says "Equity 9/30" --

A. What's the reference, sorry, just so I know I'm looking at the right thing for this?

Q. It is the liquidity tab of the Excel workbook Bates-stamped BCI-EX-(S)-00213995. TSG Reporting - Worldwide 877-702-9580

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Have you ever seen this document before?

A. Yes. It looks very similar to something you showed me earlier from the PwC work paper.

Q. And is this the liquidity haircuts that were taken by Barclays by asset class and subtype with respect to the --

A. I think I'm looking at the wrong thing here. Or my answer would be no, it's not that.

Is this what I should be looking at or not (indicating)?

Q. No, go to --

A. Shall I go to the other document? This document, yes? Which is still 641A. I still have the same thing.

(Document handed.)

MR. THOMAS: Where have we gone to? I was at the same place as the witness.

MS. CARRERO: It is -- what I had read out was BCI-EX-(S)-00213995, Liquidity tab.

Is that what the page before you --

A. I guess it's the same reference because it says "Equity 9/22 tab." Okay.

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"Liquidity" tab.

MR. THOMAS: It is the fourth flag.

MS. CARRERO: I'm sorry, I didn't flag my own as diligently as I flagged yours.

A. Okay.

Q. Have you seen this document before?

A. No, not to my recollection.

Q. And if you would look at the two "Equity 930" references about three-quarters of the way down the page.

A. Okay.

Q. Does that reflect the liquidity haircut being taken on any of the positions for which you and your team had responsibility for valuing?

A. I don't know what this is. I could conjecture what I think it says, but I'm not really aware -- we did not take a liquidity haircut for any of the positions that we assessed.

We assess the fair market value, which, as we've discussed previously, included an element of bid/offer provision or bid/offer adjustment, I should say. But at no point did

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1 HIGHLY CONFIDENTIAL - Washtell
2 we discuss a liquidity haircut.

3 This file looks like it has a factor
4 of 1 anyway, which would imply a liquidity
5 haircut is zero for the equity in convertible
6 bond positions, but that's just me interpreting
7 what I see in front of me on the spreadsheet.

8 (Discussion off the record.)

9 (Recess; Time Noted: 3:37 P.M.)

10 (Time Noted: 3:59 P.M.)

11 THE WITNESS: Before we start, can I
12 just make a clarification on that last, one
13 of the last points we were talking about?

14 So when we were talking about the
15 Lehman-issued warrants in particular, I
16 think I made the point that, I think I may
17 have said they were all issued on Lehman's
18 stock, which I think may not be the case.
19 There may be some that were issued by Lehman
20 but on a different stock or a different
21 underlying.

22 I don't recall the facts exactly now,
23 but just to clarify. I still think the
24 point remains that, you know, they are still
25 warrants issued by a bankrupt counterparty,

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2 Lehman Brothers, which is an equivalent to
3 having Lehman Brothers as a derivative
4 counterparty. And therefore, I think the
5 valuation of zero is still correct, but just
6 to clarify the wording that I used on that.

7 I just don't recall specifically now
8 whether that was the case.

9 BY MS. CARRERO:

10 Q. Do you know, subsequent to the
11 valuation for purposes of acquisition
12 accounting, whether Barclays marked those same
13 positions to?

14 MR. THOMAS: Objection to form.

15 A. I don't recall.

16 Q. Is it possible that they were marked
17 to a higher value than zero subsequent to --

18 A. I don't believe that was -- that was
19 the case, but as I say, I don't recall
20 specifically. You know, it's not something --
21 information that I have at hand. I don't
22 believe it would be the case.

23 Q. Do you know if they were sold for any
24 value?

25 A. Again, I don't believe that would be
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2 the case, but I can't answer for definite.

3 Q. If that were the case anytime between
4 the acquisition date and the publishing of the
5 acquisition balance sheet, would your team have
6 taken that into consideration in marking the
7 positions to zero simply because they were
8 issued by a bankrupt entity?

9 MR. THOMAS: Objection. Form.

10 A. If I had information before the
11 finalization of the opening balance sheet that
12 these positions had been sold for some value,
13 then we would have taken that into consideration
14 in determining a non-zero value, but I did not
15 have that information. I'm not aware of any
16 such information.

17 Q. Where would you go if you wanted to
18 determine what happened to these positions
19 subsequent to the transfer from Lehman to
20 Barclays?

21 A. As I said previously, I would start by
22 looking at the settlement systems that they were
23 booked in.

24 Q. But you and your team never did that
25 in connection with valuing these securities; is

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2 that what you're saying?

3 MR. THOMAS: Objection to form.

4 A. I'm saying that's not something we
5 didn't actively go look in the settlement system
6 to see if, on the day we finalized the opening
7 balance sheet, these positions were still booked
8 there or what had happened to them or any of the
9 other positions.

10 Q. At any time after the transfer of the
11 positions from Lehman to Barclays, did you or
12 your team attempt to ascertain whether or not
13 Barclays was able to sell the position for any
14 value?

15 A. No, but I don't believe that would
16 be -- as I said before, given that whether they
17 were warrants issued over Lehman's stock or
18 warrants issued over some other underlying this,
19 they're still warrants issued by Lehman
20 Brothers, which is now a bankrupt counterparty.

21 Q. Did you look to see if any warrants or
22 ELNs issued by Lehman were trading for any value
23 in the market at that point in time?

24 A. We looked for price information on
25 these securities, we looked for trading

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2 information on these securities, but we could
3 not find any.

4 Q. Did you look for any Lehman-issued
5 notes pricing information given that the premise
6 for valuing it at zero was that they were issued
7 by a bankrupt entity?

8 A. I don't recall specifically.

9 Q. Would that be relevant in valuing the
10 securities at zero if priced at that value
11 simply because issued by a bankrupt entity?

12 MR. THOMAS: Objection to form.

13 A. Could you repeat the question?

14 (Record read.)

15 A. When we say "would that be relevant,"
16 we mean?

17 Q. Whether or not any Lehman-issued
18 instruments were trading for value in spite of
19 their being a bankrupt entity at that point in
20 time?

21 A. I don't think we would change our
22 valuation. I think the valuation that we
23 ascribed to them as zero is appropriate.

24 Q. But you agree it would be a relevant
25 piece of information if Lehman instruments were

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2 3700 securities?"

3 MR. THOMAS: Objection to form.

4 A. I obviously wasn't on the e-mail and I
5 didn't write it, but looking at the number, 2100
6 seems consistent with the population for which
7 we were able to obtain spreads in December.

8 Q. Have you read any of the expert
9 reports that were submitted by Movants in this
10 matter?

11 A. Yes.

12 Q. Can you name those reports that you
13 have read?

14 A. I believe one by Zmijewski, if that's
15 how you say it. Zmijewski.

16 Q. Don't ask me to say it either.

17 MR. THOMAS: Zmijewski.

18 MS. CARRERO: You have learned since
19 the deposition.

20 MR. THOMAS: Well, I went to school in
21 Poland and speak Polish.

22 A. I think another one was Garvey. There
23 were -- there are other names. Slattery was
24 another one.

25 Q. And do you recall in Mr. Zmijewski's

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2 trading for a value after the filing for
3 bankruptcy?

4 A. It could be a factor, yes.

5 Q. If you could turn to a previously
6 marked deposition exhibit, 819, as well as
7 Deposition Exhibit 824, which should also be in
8 front of you.

9 If you turn first to 819, the second
10 page under the heading "Bid/Offer Spread," and
11 turn to the line that provides, "Based on an
12 analysis of the securities, we were able to
13 obtain bid/offer spreads for about 2100 of the
14 3700 securities, which had an average bid/offer
15 of 2.64 percent." Do you see that?

16 A. Yes.

17 Q. Earlier when we were discussing the
18 bid/offer spread, I believe you approximated the
19 number of bid/offer spreads available as of
20 September 22 as somewhere in the neighborhood of
21 450 to 500; is that correct?

22 A. Yes, that is correct.

23 Q. Do you know to what Mr. Morton is
24 referring to when he says that "we were able to
25 obtain bid/offer spreads for about 2100 of the

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2 report that he had come up with a number close
3 to 2100 of available bid/offer spreads on
4 September 19?

5 A. Yes, I recall reading that in the
6 document.

7 Q. I'm trying to understand the lack of
8 availability on September 22 -- scratch that.

9 The 2100 number in Mr. Zmijewski's
10 report for September 19 is similar to the 2100
11 number that you say was available in December,
12 correct?

13 A. 2100 in December. 2100 in the report.
14 The two numbers are the same. Similar.

15 Q. Why is it that Barclays was able to
16 only come up with 450 as of September 22?

17 A. The data source I believe that's used
18 by Zmijewski in that report is Bloomberg. I
19 believe, having looked at the data that's
20 available from Bloomberg, that it is flawed,
21 that there are problems with data integrity.

22 I believe these are highlighted by
23 Zmijewski in his report when he discusses the
24 fact that, in certain circumstances, he gets
25 negative prices which he has to exclude. In

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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 certain other circumstances, he gets negative</p> <p>3 bid/offer spreads, which he also has to exclude.</p> <p>4 Now, the existence of negative</p> <p>5 bid/offer spreads in particular would lead me to</p> <p>6 have concerns about whether the data that's</p> <p>7 available in Bloomberg represents a true</p> <p>8 bid/offer, executable bid/offer that is</p> <p>9 available in the market at a point in time</p> <p>10 because you could not have a negative bid/offer</p> <p>11 in the market. It doesn't exist. Couldn't</p> <p>12 exist.</p> <p>13 Q. And --</p> <p>14 A. So the use of the Bloomberg data I</p> <p>15 think is flawed. I think this doesn't just</p> <p>16 apply to the illiquid stocks.</p> <p>17 We had a look at this, I had a look at</p> <p>18 this after I read the Zmijewski paper, and for</p> <p>19 some of the more liquid stocks in the portfolio,</p> <p>20 I think we looked at -- looking at the largest</p> <p>21 15 positions, just glanced at Bloomberg data for</p> <p>22 a random sample of data, and can clearly see</p> <p>23 zero bid/offer spreads and negative bid/offer</p> <p>24 spreads based on closing price information. So</p> <p>25 I would question the integrity of that data of</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 Bloomberg.</p> <p>3 Now, the reason we used Reuters is not</p> <p>4 because I didn't trust Bloomberg data in</p> <p>5 September 2008, but we used Reuters data because</p> <p>6 that's our principal data provider within the</p> <p>7 bank for equities data. Now, when we queried</p> <p>8 information, we were able to obtain it for, as I</p> <p>9 say, 450, 500 names, something like that.</p> <p>10 We didn't observe examples of negative</p> <p>11 spreads. We didn't observe anything that led us</p> <p>12 to think there was any problem with the data</p> <p>13 that we were using, any issues over the</p> <p>14 integrity of that data. We just accepted that,</p> <p>15 okay, it's after the fact here. The</p> <p>16 availability of good closing bid-ask data is</p> <p>17 going to be limited for this population after</p> <p>18 the fact because it's not the same as getting</p> <p>19 live bid-ask data.</p> <p>20 So, coincidental to the fact that he</p> <p>21 could query a similar number that we could query</p> <p>22 in December, I can't really talk to that, but I</p> <p>23 can say I think there are significant flawed</p> <p>24 assumptions in what he's doing, and by excluding</p> <p>25 certain data and just ignoring it and carrying</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 on with the data that's there, that doesn't seem</p> <p>3 like a reasonable thing to do to me to arrive at</p> <p>4 an appropriate number.</p> <p>5 Q. In turning back to 819, where the 2100</p> <p>6 of the 3700 securities had an average bid/offer</p> <p>7 of 2.64 percent?</p> <p>8 A. Yes.</p> <p>9 Q. Do you see that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. How does that, if you then turn to</p> <p>12 824, Deposition Exhibit 824, where the average</p> <p>13 spread for December 18 data is listed as only</p> <p>14 1.93 percent --</p> <p>15 A. Yes.</p> <p>16 Q. -- do you, from the difference of 2.64</p> <p>17 percent to 1.93 percent, think that Mr. Morton's</p> <p>18 e-mail is referencing the availability of</p> <p>19 bid/offer spread information on Bloomberg as</p> <p>20 opposed to the December spread information that</p> <p>21 was ultimately used?</p> <p>22 A. No, I don't think he's doing that. I</p> <p>23 think what you see in that e-mail, which is</p> <p>24 dated December 12, which is clearly before</p> <p>25 December 18, which is in the second file, would</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 be based on Reuters data. Because we were not</p> <p>3 querying, as far as I recall, bid/offer data</p> <p>4 from Bloomberg.</p> <p>5 I believe one potential reason for the</p> <p>6 difference, and again, I didn't write the e-mail</p> <p>7 and I can't recall exactly the details, this is</p> <p>8 conjecture, but potentially it was that it was</p> <p>9 one of the sample days that we looked at earlier</p> <p>10 in December, as I said earlier, hence a slightly</p> <p>11 different number.</p> <p>12 It may also have been because in his</p> <p>13 final dataset we excluded spreads that were</p> <p>14 wider than 50 percent, and I'm not sure if that</p> <p>15 is represented in this 2.64 which is being</p> <p>16 referenced by Marcus. I definitely don't</p> <p>17 believe it was because Marcus is looking at</p> <p>18 Bloomberg.</p> <p>19 Q. Again, looking at 824, and the</p> <p>20 population covered by spread data is 86.1</p> <p>21 percent; is that correct?</p> <p>22 A. That's what I read from the summary</p> <p>23 page.</p> <p>24 Q. Yet, 2100 divided by 3700 securities</p> <p>25 would be substantially lower than a 86.1 percent</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

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figure; isn't that correct?

A. What is correct is that 86.1 percent figure represents the percentage of market value that's covered within those 2100 stocks. So it's not 2100 divided by 3700, it's 7.6 billion divided by 8.85 billion.

So, in terms of number of securities, yes, it's a lower percentage. In terms of what this number represents, it doesn't represent that. It represents the proportion of the market value, which is the more relevant statistic.

Q. Mr. Washtell, I'm putting before you what has been marked as Deposition Exhibit 832.

(Exhibit 822, a document bearing Bates Nos. BCI-EX-(S)-00176765 through 176767, marked for identification, as of this date.)

Q. So, Mr. Washtell, I stand corrected. You have before you Deposition Exhibit 822.

A. Okay.

Q. Looking at the e-mail at the top from --

A. Can I just read it?

Q. If you want to read the whole thing,
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sure.

A. If you don't mind.
(Document review.)

A. Okay.

Q. Looking at the e-mail at the top from you to Steven Calick and Eric Clark dated September 24, do you see that?

A. Yes.

Q. And the subject is "Update: LBI Positions Rec and IPV analysis." Do you see that?

A. Yes.

Q. And do you know what "IPV analysis" refers to?

A. Independent price verification. It's another terminology for price testing, i.e., the core function of our valuations team, price testing.

Q. And do you see where you write, "Kate and I have just spoken to Nick Leyhane on this. He is happy in principle with what we have done (based on the closing positions from yesterday) and agrees we should be seeing approximately \$400 million increase in value between 18th and

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19th"?

A. I see that, yes.

Q. Who is Nick Leyhane?

A. At the time, he was the head of the Arbitrage Trading Desk at Barclays, Equity Arbitrage Trading Desk.

Q. And why was Nick Leyhane happy about \$400 million increase in value between the 18th and the 19th?

MR. THOMAS: Objection to form.

A. You're slightly misreading or misinterpreting the sentence. From my reading of this, and albeit I don't recall writing this because it was 18 months ago, it says "he is happy in principle with what we have done." I don't think it says he's happy with a \$400 million increase. I think it says he agrees we should be seeing a \$400 million increase.

Q. And why would he be involved in the calculation?

A. I believe at this time, as we were reviewing positions to effectively perform a price test, as you can see from the title of the e-mail, this is very much us trying to perform

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an IPV analysis on a set of positions we received.

We have reviewed that with someone in the business. I believe I mentioned earlier that we discussed with the traders on a regular basis. Nick Leyhane, as a senior member of trading management within London, we have reviewed our analysis and our views on this portfolio with him.

Q. And so does that mean that your group, in valuing the securities within the equity portfolio that came over from Lehman, did so in conjunction with the trading desks or business side of Barclays?

A. No, I don't think this is saying we did something in conjunction with them. I think this is saying we discussed some analysis we have performed with them to ask them for their opinion.

Q. And when you write, "He agrees we should be seeing approximately \$400 million increase in value between 18th and 19th," you're saying he agrees with the analysis that your team had run, is that correct, as opposed to his

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own --

A. Yes.

Q. -- valuation?

A. I believe that's what he's saying, based on his expectation and his understanding of what had happened in the market, I guess.

Q. Was anyone else on the business side or any Barclays traders reviewing the valuations that your team was working on?

A. From reading this, it says at the bottom, "We did not manage to catch Andrea." I believe that's a reference to Andrea DeCarolis, who is the global head of Convertible Bond Trading at Barclays Capital.

It looks like at that time we would have been discussing the valuation of the convertible bond part of the portfolio and the analysis we had done on that with him. Again, I don't recall specific conversations, but from reading this e-mail, it would appear to be.

Q. And is there anyone else you recall other than Nick and Andrea?

A. No, not that I recall.

Q. And if there were increases to the
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value of positions from the 18th to 19th, would that flow onto the P&L of any specific desk or business side of Barclays?

MR. THOMAS: Objection to form.

A. I don't believe anything we were doing here would have had an impact on P&L. It would have been flowing downstream anyway.

As I said, this is me discussing an analysis on a list of positions we received in the spreadsheet with Nick Leyhane. It's not driving any management accounting profit and loss report.

Q. Would you agree with me that if a position were to be marked subsequent to the opening balance sheet at a price higher than what it had been accounted for on the opening balance sheet, that would trigger a P&L event and reflect a higher profit for Barclays' desk?

MR. THOMAS: Objection to form.

A. If I understand the question, if we originally booked something at a value and the price goes up and we're long that position, would we recognize a profit? Yes.

Q. And do you see the e-mail below from
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Stephen Calick to you and others dated September 24 immediately below?

A. Right. Okay.

Q. Do you see the last line where it says, "The valuation date is the 19th"?

A. I do.

Q. Do you recall being told that by Stephen Calick?

MR. THOMAS: Objection to form.

A. I don't recall the discussions, but clearly this is an e-mail addressed to me. I guess I would clarify that this is based -- this is some IPV analysis, as you can see, as the e-mail is titled. This is regarding a position reconciliation, an IPV analysis on some positions, which it appears Steve has requested or specified should be done as of a certain date.

Q. You believe that valuation or IPV analysis is related to the positions that were transferred from Lehman as part of the sale transaction; is that right?

MR. THOMAS: Objection to form.

A. I believe, looking at this now, this

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would have related to that population of positions, but at this time, just to clarify, I don't believe we would have been looking at putting together an opening balance sheet calculation in relation to any transaction.

We were, as this says, engaged in performing a position reconciliation and an IPV analysis for a set of positions that we had received as of a date that we had been instructed to do that. So it's slightly different, I guess, is what I'm saying.

Q. Back up to your e-mail above, in the last paragraph you write, "We did not manage to catch Andrea today so we will grab him tomorrow morning. This will be a more interesting discussion, as we have limited coverage on the converts, and I know he has expressed views that the positions needed to be written down from the BoNY values." See that?

A. I do see that.

Q. Do you recall receiving commentary from the business side of Barclays that the positions needed to be written down?

MR. THOMAS: Objection to form.

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A. No, I don't recall receiving that commentary, as you put it. Clearly, from my e-mail here, it suggests I've been made aware that Andrea has expressed concerns over the BoNY values, concerns that I guess they may not be appropriate and may reflect inflated prices for these securities.

Q. And did that expression by the Barclays traders impact the valuation that you and your group undertook of those positions?

A. No, because we still independently assessed the fair value. We still sourced the data that we used to arrive at that fair value independently. We didn't rely on the trading desk for any valuations of those securities.

Q. But the trading desks were reviewing and commenting on what they felt should be done with the positions, according to this e-mail; is that correct?

A. According to this e-mail, it sounds like the trading desks are commenting that they think the BoNY values are not correct. It also sounds like at the time I wrote this e-mail we did not have complete coverage of the

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convertible population from the data that we had sampled at that point in time.

So it sounds like we had incomplete information. The trading desk had expressed their view, but that would not have had any bearing on ultimately the valuations that we used because they were based on independent data which we, as I say, obtained independently and independently from the trading desk.

Q. Mr. Washtell, I'm putting before you what has been marked as Deposition Exhibit 823.

(Exhibit 823, a document bearing Bates Nos. BCI-EX-(S)-179808 through 179821, marked for identification, as of this date.)

A. Do I need to read all of this?

Q. If you will start at the top e-mail from Jerry Shi to yourself and dated September 25, subject: "Price testing - Converts/Eqty/Preference," and read over that e-mail as well as the attached, if you want to turn to the attachment.

A. So read all of it, yeah?

Q. Well, that e-mail is what attaches the document at the back.

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(Document review.)

A. You wanted me to read all of this attachment?

Q. Just if you want to take a look at the front --

A. I can read it. It'll just take me five minutes. Are you going to focus on a specific part?

Q. Yes. You don't have to read the whole attachment. Let's just start with the e-mail. And do you see where Mr. Shi writes, "Most of the cash equity products have observable market prices"?

A. Yes.

Q. Would you agree with that statement?

MR. THOMAS: Objection to form.

A. I don't recall specifics, but if Jerry is saying for most cash equity products we have observable market prices, and I believe from the analysis we have been through today, for most of the positions we were able to obtain data. So that doesn't sound like an unreasonable statement.

Q. And is what Mr. Shi has attached for

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you in this e-mail Lehman's convertibles Americas price testing policy?

A. That is certainly what it appears to be.

Q. And is he attaching that for you because Barclays did not at the time have one of its own price testing policies for converts, equities and preferreds?

A. No, I don't believe that's the reason. Because we did have convertible bonds, for instance, and a process and policy around that.

Q. And so --

A. I've -- I guess he's just -- I can't say specifically why he's attaching it. I assume he's attaching it to provide some information as to what his team does.

Q. Do you see the e-mail below where you write to Mr. Shi on September 15 -- I'm sorry, September 25, introducing yourself, and then in the second-to-last -- no, I'm sorry, the last paragraph, you write, "Could you please send over whatever analysis you have most recently done for these positions? And if you do have anything on the cash equity side would be very

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<p>1 HIGHLY CONFIDENTIAL - Washtell 2 interested to see it for comparison to what we 3 have sourced"? 4 A. Yes, I see that. 5 Q. And Mr. Shi at the time was 6 transitioning from Lehman to Barclays; is that 7 correct? 8 A. That's correct. 9 Q. And so when you ask him if he has 10 anything, are you asking him if Lehman has 11 analysis on these positions? 12 A. I believe I'm asking him in his role 13 as independent valuation controller for Lehman 14 Brothers for equities whether he has analysis on 15 the -- independent valuation analysis on their 16 population of convertible bonds. 17 Q. And do you recall how that information 18 was used? 19 A. I don't recall. If you look at the 20 date of the file, the zip file, it says 08/29, 21 so it looks like he's provided the August 22 month-end price testing results for convertible 23 bonds along with the price testing policy. 24 I know we did not use any August price 25 data in our analysis, so I don't know TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell 2 specifically how that was used. 3 Q. And was Mr. Shi involved in the 4 valuation of any of the converts, equity or -- 5 is that preference? 6 A. Preference shares. Yes, preference 7 shares. 8 Q. Preference shares? 9 A. Preference shares. 10 Q. Preference shares. 11 A. Sorry. My accent. End of the day. 12 Yes. 13 Sorry. The question is, was Mr. Shi 14 involved? As I said earlier, certainly members 15 of his team were involved in obtaining data for 16 me for the analysis. 17 Q. And from the appearance of this 18 e-mail, it appears that data includes Lehman 19 data; is that correct? 20 A. In this e-mail, he looks to have 21 provided some data and some analysis from Lehman 22 Brothers. I don't believe any of the data, or I 23 don't recall that any of the data that we 24 sourced from his team for the valuation was 25 based on the Lehman Brothers' data. TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - Washtell 2 From my recollection, members of his 3 team were principally involved, for example, in 4 querying data for me from Bloomberg or from IDC 5 or other external data vendors that they would 6 have access to. 7 Q. Mr. Washtell, do you know who 8 Professor Paul Pfleiderer is? 9 A. I'm aware of him, yes. 10 Q. Can you tell me what your awareness is 11 of him? 12 A. My awareness is that he's working on 13 behalf of our legal team as in the capacity as 14 some kind of expert. 15 Q. And have you had any conversations 16 with Professor Pfleiderer? 17 A. I don't believe I've had direct 18 conversations with him. I've certainly been on 19 various conference calls with the legal team and 20 representatives from whatever financial 21 consultants, et cetera, are part of that team. 22 He may have been on those calls. I don't know. 23 Q. Were those all conference calls or 24 were they in-person meetings as well? 25 A. Everything was a conference call prior TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell 2 to meeting with the lawyers in preparation for 3 this today. So everything prior to this week 4 was in conference call. 5 Q. Have you read Professor Pfleiderer's 6 report? 7 A. Not in full, in detail. 8 Q. When did you review his report? 9 A. I said I haven't read it in full, in 10 detail. I've seen it. 11 Q. And that's why I used the word -- 12 A. Review. 13 Q. -- "review" as opposed to "read." 14 When did you receive a copy of 15 Professor Pfleiderer's report? 16 A. I don't recall specifically. 17 Q. Do you recall if it was a month or 18 less ago? 19 A. It was more than that. 20 Q. Was it three months ago? 21 A. I don't know. More than a month. I 22 don't know beyond that. It's ... 23 Q. Was it in the winter? 24 A. Was it this year or last year? I 25 don't recall. It may have been the start of TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - Washtell 2 this year. It may have been the end of last 3 year. It may have been two months ago, four 4 months ago. We've been looking at an awful lot 5 of documents. 6 Q. Had the report been finalized at the 7 point that you saw it? 8 MR. THOMAS: Objection to form. 9 A. I don't know. I don't recall if it 10 said final version. I don't recall being told 11 if it was final version or draft. I don't ... 12 Q. Were you asked to comment on it? 13 A. No. 14 Q. And prior to the submission of the 15 report, do you recall how many conversations you 16 had in connection with the preparation with it? 17 MR. THOMAS: Objection to form. 18 A. I don't recall having any 19 conversations in relation to the preparation of 20 the document. 21 Q. And did you sit down with the -- did 22 you have conference calls with the Financial 23 Scholars Group prior to the submission of 24 Professor Pfeleiderer's report? 25 MR. THOMAS: Objection to form. TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell 2 A. I don't know when it was submitted. I 3 don't know when it was prepared. I've been on 4 conference calls with representatives from the 5 legal team which may or may not have included 6 representatives from FSG. I don't know 7 specifically who was on those calls and what the 8 output of those meetings was going towards. 9 Q. Do you recall if you had any calls 10 with the legal team or the Financial Scholars 11 Group prior to January 8 of this year in 12 connection with the preparation of Professor 13 Pfleiderer's report? 14 MR. THOMAS: Objection to the form. 15 Among other things, asked and answered and 16 assumes facts not in evidence. 17 A. It sounds like I answered it already, 18 no? 19 MR. THOMAS: Well, you can go ahead 20 and respond. 21 A. What was the question? 22 (Record read.) 23 A. I don't recall. I don't recall having 24 any specific conversations in preparation -- 25 with the purpose of preparation of a report, and TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - Washtell 2 I don't recall the timing of the conference 3 calls that I have been involved in with these 4 guys. 5 Q. So you don't recall explaining to the 6 Financial Scholars Group or anyone else working 7 under Professor Pfeleiderer's direction the 8 policies and procedures that were followed in 9 pricing the equities or the outcome of the 10 equity valuation; is that correct? 11 MR. THOMAS: You're going into the 12 content of calls with his attorneys. The 13 only calls he remembers were with his 14 attorneys. He doesn't even know if FSG was 15 on them and you're going into the content of 16 those calls, so I'm going to instruct the 17 witness not to answer based on privilege. 18 MS. CARRERO: To the extent that 19 they're all an original source of 20 information that was used in any report 21 prepared by a Barclays' expert and any 22 testifying expert material, I'm not sure 23 that I agree that it would be subject to 24 privilege, but if those conversations didn't 25 happen and feed into a testifying expert's TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell 2 report, then just that's fine and you can 3 just tell me to back off and end the 4 inquiry. I just want to know whether or not 5 there were any conversations -- 6 MR. THOMAS: I'm not going to tell you 7 what the purposes of our privileged 8 conversations were with our client. I'm 9 going to instruct the witness not to answer. 10 BY MS. CARRERO: 11 Q. Did you have any conversations with 12 the Financial Scholars Group or anyone working 13 at the direction of Barclays' testifying expert, 14 Professor Pfeleiderer? 15 MR. THOMAS: Objection. Asked and 16 answered. 17 A. Exactly what I said previously. All 18 calls, discussions I've had on this have been 19 conference calls with the lawyers. Who else was 20 on those calls I don't recall. 21 Q. And can you recall how many 22 conversations you've had with the lawyers prior 23 to January of 2008 -- I'm sorry, prior to 24 January of 2010? 25 MR. THOMAS: Objection to form. TSG Reporting - Worldwide 877-702-9580</p>

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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 Q. Was that your understanding when you</p> <p>3 wrote your part of the chain to Eric Clark?</p> <p>4 A. Again, I don't recall the e-mail, but</p> <p>5 it looks like my concern at the time is how</p> <p>6 we're going to risk manage these positions, how</p> <p>7 we're going to value these positions, how do we</p> <p>8 ensure from a valuation control perspective that</p> <p>9 these positions are covered. That looks and I</p> <p>10 would guess is what my primary concern is at</p> <p>11 that point in time.</p> <p>12 Q. And your understanding that the</p> <p>13 positions that you're writing about here, sir,</p> <p>14 are the same listed equity positions that you</p> <p>15 gave me you mentioned in your answer a moment</p> <p>16 ago, correct?</p> <p>17 MR. THOMAS: Objection to form.</p> <p>18 A. Which answer? Sorry.</p> <p>19 Q. Let me try it this way. You write at</p> <p>20 5:03 A.M. to Mr. Clark, "Thanks, Eric. Per your</p> <p>21 understanding, then, are these positions going</p> <p>22 to remain in the Lehman systems to be</p> <p>23 risk-managed going forward?" You see that?</p> <p>24 A. Yes.</p> <p>25 Q. When you wrote the words "these</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 positions," what did you mean?</p> <p>3 A. I assume I meant the listed option</p> <p>4 positions that were part of the transaction, but</p> <p>5 there's not a lot of information in this e-mail,</p> <p>6 so it's -- it's, you know, OCC position.</p> <p>7 My principal concern in this would</p> <p>8 have been, as I say, there's a portfolio of</p> <p>9 positions. Our New York head of Equity</p> <p>10 Derivatives Trading is saying he's macro-hedging</p> <p>11 these. They're booked in a system. Let's</p> <p>12 figure out how we risk-manage them. My</p> <p>13 principal concern is this is something we need</p> <p>14 to look at from a valuation perspective.</p> <p>15 Q. Was it your understanding, sir, that</p> <p>16 the positions referenced in this e-mail, the OCC</p> <p>17 positions, were at the time of this e-mail, the</p> <p>18 25th of September, still in OCC systems --</p> <p>19 sorry, still in LBI's systems?</p> <p>20 A. From the e-mail I have written here, I</p> <p>21 don't recall, again, I don't recall, but from</p> <p>22 the e-mail here, I'm asking a question of</p> <p>23 whether these positions are going to remain in</p> <p>24 Lehman's systems, which implies they're</p> <p>25 currently in Lehman's systems at this point in</p> <p>TSG Reporting - Worldwide 877-702-9580</p>
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<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 time.</p> <p>3 Q. Did you ever come to learn that the</p> <p>4 positions were moved from Lehman's systems, sir?</p> <p>5 A. Not to my recollection.</p> <p>6 Q. Did you ever hear that Lehman's</p> <p>7 systems were switched off after the closing</p> <p>8 which necessitated a transfer of listed option</p> <p>9 positions to Barclays?</p> <p>10 A. I don't recall hearing that, no.</p> <p>11 Q. That would be inconsistent, at least</p> <p>12 as of the date of this e-mail, that would be</p> <p>13 inconsistent with your understanding of the</p> <p>14 position as reflected in the words you wrote on</p> <p>15 this document, correct?</p> <p>16 MR. THOMAS: Objection to form.</p> <p>17 A. Again, not recalling specifics at the</p> <p>18 time, from what I've written in this e-mail</p> <p>19 about the positions remaining in the Lehman</p> <p>20 system, implies at that time my knowledge was</p> <p>21 that they were booked in the Lehman's system.</p> <p>22 MR. OXFORD: Thank you, sir. I have</p> <p>23 no more questions for you.</p> <p>24 MR. KAY: No questions from the</p> <p>25 Committee.</p> <p>TSG Reporting - Worldwide 877-702-9580</p>	<p>1 HIGHLY CONFIDENTIAL - Washtell</p> <p>2 MR. THOMAS: Okay. I just have a</p> <p>3 handful of questions.</p> <p>4 EXAMINATION BY</p> <p>5 MR. THOMAS:</p> <p>6 Q. Do you recall being asked if market</p> <p>7 participants that conducted transactions would</p> <p>8 take into consideration information about events</p> <p>9 that had not yet happened?</p> <p>10 A. Yes.</p> <p>11 Q. Does the fact that a market</p> <p>12 participant transacting something cannot take</p> <p>13 into account future events which it doesn't</p> <p>14 know, does it necessarily follow, does it</p> <p>15 necessarily follow that, in estimating the fair</p> <p>16 value of securities at a particular point in</p> <p>17 time, you should ignore or exclude all</p> <p>18 information about market conditions immediately</p> <p>19 after that point in time?</p> <p>20 A. No, it does not follow. I would say,</p> <p>21 on the contrary, as I was just mentioning, in</p> <p>22 assessing fair value as of a point in time, we</p> <p>23 would generally consider all information that we</p> <p>24 have both on a particular day, but also in the</p> <p>25 time period leading up to that day and the time</p> <p>TSG Reporting - Worldwide 877-702-9580</p>

1 HIGHLY CONFIDENTIAL - Washtell
2 period after that day.

3 So if we are assessing as part of our
4 monthly processing process, for example, the
5 valuations as of September 30, would we consider
6 market information, market trades and quotes
7 that are available on the 1st, 2nd, 3rd of
8 October, then yes, we would as part of our
9 normal practice.

10 Q. Would it make any sense to you if you
11 were trying to measure, for example, an illiquid
12 security at a particular point in time, let's
13 say 12 noon, that in doing so, you would ignore
14 a trade in that security that occurred an hour
15 later?

16 A. No, it would not make any sense to do
17 that. You would definitely consider that piece
18 of information as is quite key to assessing the
19 fair value, I would say.

20 Q. Is considering market information
21 after a particular valuation point in time
22 something that is consistent with Barclays'
23 valuation practices and procedures?

24 A. Absolutely, yes, it's consistent with
25 how we perform our monthly processing process.

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2 It's documented in our processing policy
3 application guidelines. It's something that we
4 have regularly discussed with our auditors.
5 Additionally, it's something I have discussed
6 with our regulators.

7 Q. So your auditors and regulators are
8 aware of that approach and take no exception to
9 it?

10 A. That's correct.

11 Q. Earlier when you were being asked
12 about your use of data from December as part of
13 an analysis and calculating the fair value of
14 certain equities as of September 22, 2008,
15 counsel repeatedly described that in counsel's
16 questioning as, quote, backdating. Would you
17 consider that to be backdating in any way?

18 A. No, I would not consider that to be
19 backdating in any way. I would say as part of
20 our job we're always assessing the fair value of
21 something at a point in time after the fact by
22 definition of what we do. In no way is that
23 backdating.

24 Q. And again, your auditors were fully
25 aware of the processes and procedures by which

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1 HIGHLY CONFIDENTIAL - Washtell
2 you calculated fair value for the equities?

3 A. Absolutely. For this, our normal
4 practices specifically for this balance sheet
5 calculation, our auditors were fully aware of
6 the methodology we used. They were supportive
7 of it. They were in agreement with it.

8 Q. You understand that your testimony
9 today is part of a court proceeding and may be
10 considered by the Court; is that correct?

11 A. That's correct.

12 Q. Were you asked to value a portion of
13 the assets Barclays received from Lehman
14 pursuant to the sale transaction between Lehman
15 and Barclays in September of 2008?

16 A. Yes.

17 Q. Will you please describe the group of
18 assets that you were asked to value?

19 A. I would describe those assets as the
20 equity assets, including convertible bonds.

21 Q. What was the goal of your valuation
22 effort?

23 A. The goal of our valuation effort was
24 to assess the fair value of that portfolio of
25 securities.

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2 By "fair value," we mean in accordance
3 with the accounting guidelines, specifically, IS
4 39, under which we operate.

5 Q. Were all directions given to you by
6 Barclays consistent with the goal you just
7 stated of calculating an accurate fair value?

8 A. Yes.

9 Q. Did you at all times during your work
10 attempt to fairly and reasonably value the
11 assets?

12 A. Yes.

13 Q. When you made decisions concerning how
14 to calculate bid adjustments in accord with the
15 governing accounting standards, for example,
16 were you influenced by any desire to achieve a
17 lower valuation or any result other than an
18 accurate statement of fair value?

19 A. No.

20 Q. Were the decisions you made with
21 respect to calculating a fair value of the
22 equities as of September 22, 2008 governed
23 strictly by the goal of accurately stating fair
24 value?

25 A. Yes.

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1 HIGHLY CONFIDENTIAL - Washtell
2 Q. At any time did anyone ever suggest to
3 you that you should do anything other than
4 attempt to calculate an accurate fair value of
5 the assets?

6 A. No.

7 Q. Did anyone ever say to you, in form or
8 substance, that a result other than the fair
9 value of the assets was desired or should be
10 achieved?

11 A. No.

12 Q. Did anyone ever indicate to you or, to
13 your knowledge, anyone else working on the
14 valuation of the Lehman assets, that you should
15 attempt to understate the fair value of the
16 assets in any way or to value them lower than
17 you otherwise would?

18 A. No.

19 Q. Would you please describe your
20 professional background and experience with
21 respect to valuing such assets?

22 A. My professional qualifications are I'm
23 a chartered accountant. I'm a member of the
24 Association of Chartered Management Accountants
25 and have been since 2003. I have worked at

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1 HIGHLY CONFIDENTIAL - Washtell
2 Barclays for nine years in total, within the
3 Finance function for all of that time, but in
4 various different roles within the Product
5 Control team.

6 For the last four and a half years,
7 I've specifically worked in the Independent
8 Valuation Control Group, and for all of that
9 time I've been responsible for the valuation of
10 equity derivatives and equity products.

11 Q. Do you believe the valuation you
12 ultimately reached for those assets that you
13 valued reflect their fair value as of September
14 22, 2008?

15 A. Yes.

16 Q. Did you attempt to value the Lehman
17 assets in a manner consistent with Barclays'
18 practices and policies?

19 A. Yes.

20 Q. Did you interact with PwC, your
21 auditors, during their review of the valuation
22 you performed?

23 A. Yes, quite extensively.

24 Q. Would you please describe that
25 interaction and their efforts with respect to

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1 HIGHLY CONFIDENTIAL - Washtell
2 the valuation?

3 A. Yes. That interaction, from memory,
4 lasted a number of weeks, if not a couple of
5 months. I was engaged with one or two members
6 of their team on a regular basis. From
7 recollection, that was at least weekly that I
8 would be having meetings or discussing with
9 them.

10 They looked at all of the data that we
11 used for the valuation. They did extensive
12 sampling analysis. They questioned all the
13 assumptions. They questioned the methodologies.
14 They effectively performed an audit of our, call
15 it a detailed audit of our methodology, as they
16 normally would as part of their sort of year-end
17 audit work, for example.

18 Q. At the end of all that work, did they
19 accept your valuation and procedures?

20 A. Yes, to my understanding, they did.

21 MR. THOMAS: Thank you, I have nothing
22 further.

23 MS. CARRERO: I just have one
24 follow-up question.

25 FURTHER EXAMINATION BY

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1 HIGHLY CONFIDENTIAL - Washtell
2 MS. CARRERO:

3 Q. In connection with any monthly price
4 testing work that your group does as of the end
5 of the month, when would the results of that
6 price testing be available?

7 A. Our deadlines for reporting, final
8 reporting on global price testing results are
9 working day 12 after month-end. In a period up
10 to working day 12, all results as they become
11 available would be discussed with the relevant
12 traders, trading desk heads, regional business
13 heads. And we have a detailed timeline of
14 deadlines, what's available when, what reports
15 are produced when in our price testing policies.

16 MR. THOMAS: Thank you very much.

17 THE WITNESS: Okay.

18 (Time Noted: 5:43 P.M.)

19 oOo

20 MARK WASHTELL

21 Subscribed and sworn to
22 before me this day
23 of 2010.

24 TSG Reporting - Worldwide 877-702-9580

1
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

In Re: Chapter 11

5 LEHMAN BROTHERS Case No. 08-13555 (JMP)

HOLDINGS, INC., et al., (Jointly Administered)

6 -----)

7
8 * * * HIGHLY CONFIDENTIAL * * *

9 DEPOSITION OF JASEN YANG

10 New York, New York

11 Friday, September 4, 2009

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18
19
20 Reported by:

FRANCIS X. FREDERICK, CSR, RPR, RMR

21 JOB NO. 24621

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<p>1 2 3 4 5 September 4, 2009 6 9:36 a.m. 7 8 9 HIGHLY CONFIDENTIAL deposition of 10 JASEN YANG, held at the offices of Jones 11 Day, 222 East 41st Street, New York, New 12 York, pursuant to Notice, before Francis 13 X. Frederick, a Certified Shorthand 14 Reporter, Registered Merit Reporter and 15 Notary Public of the States of New York 16 and New Jersey. 17 18 19 20 21 22 23 24 25</p>	<p>1 2 A P P E A R A N C E S : 3 4 JONES DAY, LLP 5 Attorneys for Lehman Brothers, Inc. 6 222 East 41st Street 7 New York, New York 10017-6702 8 BY: WILLIAM J. HINE, ESQ. 9 GEORGE E. SPENCER, ESQ. 10 11 BOIES SCHILLER & FLEXNER, LLP 12 Attorneys for Barclays Capital 13 575 Lexington Avenue - 7th Floor 14 New York, New York 10022 15 BY: JACK G. STERN, ESQ. 16 17 HUGHES, HUBBARD & REED, LLP 18 Attorneys for the SIPA Trustee 19 One Battery Park Plaza 20 New York, New York 10004-1482 21 BY: SAMUEL C. McCOUBREY, ESQ. 22 23 ALSO PRESENT: 24 INGRID M. CHRISTIAN, Alvarez & Marsal 25</p>
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<p>1 J. YANG - HIGHLY CONFIDENTIAL 2 J A S E N Y A N G, called as a witness, 3 having been duly sworn by a Notary 4 Public, was examined and testified as 5 follows: 6 EXAMINATION BY 7 MR. HINE: 8 Q. Good morning, Mr. Yang. 9 A. Good morning. 10 Q. My name is -- we met off the 11 record but my name is Bill Hine and I'm with 12 the firm of Jones Day and we are special 13 counsel to the Creditors Committee -- I'm 14 sorry, to the estate of Lehman Brothers 15 Holdings, Inc. in connection with this 16 bankruptcy proceeding so we're taking some 17 discovery with respect to that. And this 18 deposition here is what's called a 30(b)(6) 19 deposition and you've been designated by 20 Barclays as a deponent for a couple select 21 topics which we'll go over in a little bit. 22 A. Um-hum. 23 Q. Have you ever been deposed before? 24 A. No, I have not. 25 Q. Okay. So I'm sure your counsel</p>	<p>1 J. YANG - HIGHLY CONFIDENTIAL 2 has advised you of the ground rules but 3 basically I'm going to ask you some questions. 4 You're going to give me some answers to the 5 best you can. My one request is that sometime 6 during the deposition I will undoubtedly ask a 7 misleading question or use a word improperly 8 or one of your technical terms that you folks 9 use. Please correct me, ask me to clarify it. 10 I want to ask you clear questions so you can 11 give me clear answers. So if we can agree on 12 that we can probably get started. 13 MR. STERN: Yes. I'll just note 14 for the record that the two topics are 15 first topic 4 which is a person with 16 knowledge of the calculations shown on 17 the e-mail of BCI 000580; and topic 5, 18 the marking process to take place the 19 afternoon of Friday, September 19th, 20 2008, referenced in BCI 000878 and 21 BCI-EX-00012161. 22 BY MR. HINE: 23 Q. And I will be asking you questions 24 about those topics but also some general 25 questions around those topics.</p>

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<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 MR. HINE: So we do reserve our</p> <p>3 rights to conduct the deposition of Mr.</p> <p>4 Yang in his personal capacity if the</p> <p>5 need ever arises.</p> <p>6 But in that vein why don't we</p> <p>7 enter as the first exhibit the</p> <p>8 deposition notice.</p> <p>9 MR. SPENCER: Previously marked.</p> <p>10 BY MR. HINE:</p> <p>11 Q. Okay. Mr. Yang, I'm handing you a</p> <p>12 copy of a document previously marked as</p> <p>13 Exhibit 81B from which your counsel was</p> <p>14 reading, I believe. I just wanted to point</p> <p>15 out to you topics 4 and 5 on page 3.</p> <p>16 A. Um-hum.</p> <p>17 Q. Do you see them?</p> <p>18 A. Yes, I do.</p> <p>19 Q. You understand that you've been</p> <p>20 designated by Barclays as the witness to speak</p> <p>21 on those topics?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Did you prepare for your</p> <p>24 deposition at all today?</p> <p>25 A. Maybe.</p>	<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 Q. What does that mean?</p> <p>3 MR. STERN: Yes. He met --</p> <p>4 A. Yes. The short answer is yes. I</p> <p>5 didn't know if the question was today or...</p> <p>6 Q. Okay. Fair enough.</p> <p>7 Did you conduct any investigations</p> <p>8 or factual reviews in preparation for your</p> <p>9 deposition on those two topics?</p> <p>10 A. Yeah. I took a look at some of</p> <p>11 the e-mails that came across my desk around</p> <p>12 that time.</p> <p>13 Q. Okay. Anything else?</p> <p>14 A. No. Just review of personal -- of</p> <p>15 my e-mails.</p> <p>16 Q. Okay. Did you meet with counsel</p> <p>17 in preparation for today's deposition?</p> <p>18 A. Yes, I did.</p> <p>19 Q. Okay. Did you review any</p> <p>20 documents with counsel?</p> <p>21 A. Yes, I did.</p> <p>22 Q. Did any of those documents refresh</p> <p>23 your recollection about either of these two</p> <p>24 topics?</p> <p>25 A. Yes.</p>
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<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 Q. What documents are they?</p> <p>3 A. In particular, I think two e-mails</p> <p>4 that were related to topic 4. I believe topic</p> <p>5 4 is an e-mail with a series of numbers that I</p> <p>6 did to get some schedules sort of backing up a</p> <p>7 couple of those numbers.</p> <p>8 Q. Okay. And those e-mails were with</p> <p>9 who?</p> <p>10 A. I received them, you know, that</p> <p>11 morning. Their times are clear in my head.</p> <p>12 At 1:01 a.m. and 9:45 a.m. on the 19th.</p> <p>13 Q. Okay.</p> <p>14 A. But...</p> <p>15 Q. And do you recall who the e-mails</p> <p>16 were with?</p> <p>17 A. I don't remember exactly. I think</p> <p>18 someone in operations.</p> <p>19 Q. Okay. And do you know what the</p> <p>20 topics of the e-mails were?</p> <p>21 A. Yeah. The two numbers that I'm</p> <p>22 referencing are just Fed Wire -- sort of a</p> <p>23 block of Fed Wire settled securities</p> <p>24 referenced in topic 4 and a block of DTC</p> <p>25 settled securities in topic 4. And they were</p>	<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 just lists of the securities that were</p> <p>3 purportedly sort of making up those</p> <p>4 populations of securities.</p> <p>5 Q. Okay. Anything else on those</p> <p>6 e-mails that you recall?</p> <p>7 A. Well, it was a list of the</p> <p>8 securities and just sort of miscellaneous</p> <p>9 information about them.</p> <p>10 Q. Okay.</p> <p>11 A. Including sort of, you know,</p> <p>12 amounts and coupons and I think BoNY's marks</p> <p>13 on them.</p> <p>14 Q. And when you say BoNY you're</p> <p>15 referring to Bank of New York, correct?</p> <p>16 A. Yes.</p> <p>17 Q. All right. So if we during this</p> <p>18 deposition we use the phrase BoNY we'll both</p> <p>19 understand it to mean Bank of New York; is</p> <p>20 that right?</p> <p>21 A. Yes.</p> <p>22 Q. All right. Before I get to the</p> <p>23 documents in question, could you just give me</p> <p>24 a brief description of your job at Barclays.</p> <p>25 A. Yes. I was a member of a group</p>

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<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 called the Principal Mortgage Trading Group</p> <p>3 where I -- sort of a proprietary trading and</p> <p>4 portfolio management function using the bank's</p> <p>5 capital.</p> <p>6 Q. And when you say "was," are you</p> <p>7 talking about the period of time --</p> <p>8 A. I'm talking about the period of</p> <p>9 time. I guess I still am.</p> <p>10 Q. Okay. Let's just be specific</p> <p>11 here.</p> <p>12 A. Yes.</p> <p>13 Q. On the week of September 15th,</p> <p>14 2008, this was your job?</p> <p>15 A. Yes. That was my job.</p> <p>16 Q. And what was your job title?</p> <p>17 A. Director.</p> <p>18 Q. Okay. And is that still your job?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. So since then -- from</p> <p>21 September 2008 until today you've held that</p> <p>22 same job?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And when I see on the</p> <p>25 e-mails after people's names, the designation</p>	<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 markets --</p> <p>3 A. Um-hum.</p> <p>4 Q. -- is that the Principal Mortgage</p> <p>5 Trading Group you're talking about?</p> <p>6 A. We are a subset I think of that</p> <p>7 designation. I don't think that actually is a</p> <p>8 very precise designation but it's just</p> <p>9 attached to our e-mail system.</p> <p>10 Q. Okay. In your position and in the</p> <p>11 position you held in September of 2008 who did</p> <p>12 you report to?</p> <p>13 A. Stephen King.</p> <p>14 Q. Okay. And what's his title?</p> <p>15 A. He was a managing director in the</p> <p>16 Principal Mortgage Trading Group.</p> <p>17 Q. Did you report to anyone else?</p> <p>18 A. No.</p> <p>19 Q. And who reported to you?</p> <p>20 A. Let's see. At the time Daniel</p> <p>21 Long did. I think he may have been my only</p> <p>22 direct report at the time.</p> <p>23 Q. Okay. And could you just describe</p> <p>24 for me your duties in that capacity? And,</p> <p>25 again, I'm talking about the week of September</p>
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<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 15th, 2008 up to the present.</p> <p>3 A. You know, my job encompasses a</p> <p>4 variety of roles.</p> <p>5 Q. Sure.</p> <p>6 A. Including trading of certain types</p> <p>7 of securities including CDOs and other --</p> <p>8 primarily fixed income securities. As well</p> <p>9 as, you know, I perform sort of a structuring</p> <p>10 function inside the group. So -- which really</p> <p>11 means either analyzing or executing sort of</p> <p>12 more complicated structured transactions.</p> <p>13 Q. Okay.</p> <p>14 A. You know, rather than simple</p> <p>15 buying and selling.</p> <p>16 Q. Okay. And are you involved with</p> <p>17 pricing within that group?</p> <p>18 A. Yes. For certain securities.</p> <p>19 Certain securities held by the PMTG group I'm</p> <p>20 involved in pricing securities, yes.</p> <p>21 Q. Okay. And, again, before we get</p> <p>22 into these documents, did you have any role in</p> <p>23 the negotiations between Barclays and Lehman</p> <p>24 during the week of September 15th in</p> <p>25 connection with the sale transaction?</p>	<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 A. No. All my interactions were</p> <p>3 purely internal.</p> <p>4 Q. Okay. And, again, I just want to</p> <p>5 get a general scope of your involvement --</p> <p>6 A. To be clear, there was no</p> <p>7 negotiations. Occasionally there were</p> <p>8 e-mails, you know, requesting information from</p> <p>9 people at Lehman.</p> <p>10 Q. Okay. And information relating to</p> <p>11 what?</p> <p>12 A. Let's see. Either populations of</p> <p>13 securities that I was sort of assigned to be</p> <p>14 analyze.</p> <p>15 Q. Okay.</p> <p>16 A. Or -- well, I guess, generally</p> <p>17 about populations of securities I was assigned</p> <p>18 to analyze.</p> <p>19 Q. Okay. We've had many depositions</p> <p>20 before so I just want to see if I can get you</p> <p>21 into different areas that we've all talked</p> <p>22 about at many depositions.</p> <p>23 Are you familiar with what we've</p> <p>24 been calling the September 18th repurchase</p> <p>25 transaction?</p>

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2 A. Yes.

3 Q. Okay. And if I use that term
4 you'll know what that means?

5 A. When you say that you're referring
6 to the transaction that Barclays entered into
7 on September 18th.

8 Q. Correct.

9 A. Yes.

10 Q. Do you have any understanding what
11 that transaction involved?

12 A. I think fundamentally I do. You
13 know, it's what I call sort of Barclays'
14 assumed repo where fundamentally obviously
15 they took possession of, you know, a large
16 portfolio of securities and provided funding
17 in exchange.

18 Q. Okay. And when you say took, took
19 from Lehman Brothers?

20 A. Yes.

21 Q. Okay. And I believe that's the
22 transaction that we're going to get to when we
23 get to the documents that you've been
24 designated.

25 Were you involved in any other

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2 pools of securities that came to Barclays as a
3 result of the Lehman Brothers transaction?

4 A. Yes. You know, I've reviewed I
5 suppose any number of portfolios of
6 securities, some of which I think -- not of
7 all of which were -- I suppose ended up being
8 transferred as portfolios themselves. But I
9 did review additional securities that were
10 delivered to Barclays subsequent to this
11 transaction as well as, you know, any number
12 of other portfolios.

13 Q. Okay. Have you heard the term
14 unencumbered assets that were transferred to
15 Barclays as a result of the Lehman
16 transaction?

17 A. Yes.

18 Q. And so were you involved -- and,
19 again, tell me if I'm wrong -- correct me if
20 I'm wrong, but I would consider that separate
21 and distinct from the pool of securities that
22 came over to Barclays as a result of the
23 September 18th repo, correct?

24 A. Yeah. They could be separated.

25 Q. Okay. And could you describe for

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2 me your role in connection with those
3 unencumbered assets.

4 A. In general, just to review the
5 portfolio. Understand what it encompassed.
6 Think about how Barclays might value it.

7 Q. Okay. And were you involved in
8 booking these various pools of securities into
9 Barclays' system?

10 A. Yes. I was involved in
11 coordinating that process.

12 Q. Okay. Anyone else involved in
13 that process?

14 A. Frankly, a very long number of
15 people were because the securities were booked
16 by -- you know, there were many different
17 types of securities that had to be booked into
18 many different kind of systems, many different
19 trading assistants and traders.

20 Q. Is it fair to say the booking of
21 these securities into Barclays' system was
22 principally done within Mr. King's department?

23 A. I believe PMTG played a central
24 role in coordinating them but it was actually
25 booked by -- PMTG had access to certain types

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2 of systems and to the extent other groups had
3 to be involved they were.

4 Q. Okay. Was PMTG the principal
5 entity within Barclays Capital that was
6 involved in valuing or pricing these
7 securities?

8 A. I would say it was -- PMTG played
9 a coordinating role. And by that I mean -- I
10 think we took the first cut at the portfolios
11 and then requested additional -- the
12 assistance of additional expertise inside the
13 firm as we needed it.

14 Q. Okay. And from what departments
15 would that expertise come?

16 A. It might have come from either,
17 say, the credit trading desk, the emerging
18 markets desk, the equities division, the rates
19 desk. By rates I mean the desk that trades
20 treasury and agency securities.

21 Q. So am I correct to say it would
22 come from different departments depending upon
23 the nature of the securities involved?

24 A. Right.

25 Q. Okay.

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Mr. Yang, I'm going to hand you a copy of what's previously marked as Exhibit 144 which is one of the documents referenced in the notice -- 30(b)(6) notice.

A. Um-hum.

Q. If you would mind taking a minute and let me know when you've had a chance to look at the document.

A. Yeah. I'm ready.

Q. You're ready? Okay.

Have you ever seen this document before?

A. Yes, I have.

Q. What is it?

A. Well, it's an e-mail from Marty Malloy who was sort of the senior member in the repo group at Barclays to Gerard and Stephen. And it is I suppose -- keeping in mind that Marty is not a trader of securities and that's not what's done inside the repo area or operations area, obviously, I think this is his interpretation of the state of that I guess what we're calling the September 18th repo transaction.

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Q. Before you continue, let me just ask a couple questions. Who is Marty Malloy?

A. He was a senior member of the repo business at Barclays.

Q. That's separate and distinct from PMTG?

A. Yes.

Q. Okay. And his duties generally involve repo transactions.

A. Right. Right.

Q. Okay. And then when you said Gerry you're talking about Gerard LaRocco?

A. Right.

Q. And his role at Barclays is what?

A. I believe he was and is the chief administrative officer of the Americas.

Q. Okay. And do you know why he would be interested in this type of analysis?

A. I believe -- I believe that operations has some reporting role into him and this data would have come from the operations side of things.

Q. Okay.

A. But I'm not fully familiar with

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his role in the transaction.

Q. And operations is also separate and distinct from PMTG?

A. Yes, it is.

Q. And you said Stephen, you meant Mr. King?

A. Yes.

Q. Who is Jacqui Stanley-Johns who is a c.c. on this e-mail?

A. I actually do not know.

Q. Okay. You never heard of her before?

A. I don't know who he or she is.

Q. Okay. You'll see above that e-mail heading is another e-mail. I guess that means that this was forwarded to someone else?

A. Oh, yes.

Q. Am I correct to say that Mr. LaRocco forwarded it to Mr. Keegan?

A. That's what it looks like, yes.

Q. And who is Mike Keegan?

A. Mike Keegan ran a number of principal investing businesses at Barclays.

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Although, not including PMTG.

Q. So he's a trader?

A. Yeah. Yeah. Or rather I think he's a -- supervised traders.

Q. Okay. And he supervises traders in an area of the business separate from PMTG?

A. Yes.

Q. Okay. And his area is what?

A. I believe they're a number of principal investing businesses. What I mean is our businesses that deploy the bank's capital to make investments. I don't know all of them. But I know...

Q. I don't see your name on this e-mail. How is it that you're familiar with this e-mail?

A. I believe this was subsequently forwarded to me. I can't remember by who. Since I know, you know, obviously a number of these folks.

Q. Okay. Do you recall when it was forwarded to you?

A. Not precisely. I would expect sometime not long after this.

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Q. Okay. Do you know why it was forwarded to you?

A. Because I was tasked, you know, as one of the actual front office personnel which is to say traders who would start actually looking at these securities and trying to understand what the portfolio was. And then, you know, as a result attempt to value it from Barclays' perspective as well risk manage it.

Q. Okay. So just to understand what I think you said, they're forwarding -- someone forwarded this to tell you the pools of securities that were going to be coming into Barclays' system from the Lehman transaction; is that right?

A. I suppose it would have happened already at this point. But, yeah. I think to at least apprise me of what other representations were being made about this portfolio.

Q. Okay.

A. For this transaction inside the firm.

Q. Okay. So you were not involved in

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preparing this list or analysis?

A. No, I was not.

Q. Okay. Do you know who was?

A. I don't. I can only assume Marty was.

Q. Okay. And you're just assuming that based on --

A. I'm assuming that because he sent the e-mail and I don't see any other forwards.

Q. Do you know why he prepared this type of analysis?

A. Not precisely. I assume because -- I suppose because this is the way he was thinking about the transaction.

Q. Okay. Other than that, do you have any understanding of why he prepared this analysis?

A. It's a very general question. I mean, I could -- he was involved -- because he was in the repo -- on the repo side I think the actual execution of the transaction would have -- you know, the legal form of this transaction was something that he routinely did. So I think he was probably looked to as

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sort of, you know, one of the bank's resources and in sort of evaluating the actual execution of the transaction.

Q. Okay. You're surmising this based on his position in this e-mail; is that right?

A. Right. Right.

Q. Okay. You don't have any specific knowledge about why he might have been preparing this analysis?

A. I don't know who asked him for this or what question this is in response to, no.

Q. Okay. Do you recall any discussions within Barclays about this analysis presented on this e-mail?

A. Certainly -- certainly we did discuss it. You know, I mean --

Q. Who did you discuss it with?

A. Probably primarily Stephen King.

Q. Okay. I assume you discussed it after you received a copy of it.

A. Right.

Q. And so are we talking about the weekend of the 20th and 21st?

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A. Probably the same day.

Q. Okay. And do you recall your discussions with Mr. King about this e-mail?

MR. STERN: Excuse me. The same day being the 19th of September?

A. The same day being the 19th.

I don't recall specifically what we would have -- to what end we were discussing it.

Q. Do you recall generally?

A. I would imagine that we were looking at the numbers and, you know, our -- I guess we were looking at the numbers. We would probably have been trying to evaluate sort of critically which of these numbers were reliable and whether or not, you know, the transaction looked like matched what we expected it to be.

Q. And what did you conclude based on that?

A. I don't know that we ever came up with a specific conclusion. Besides that we -- obviously to validate any of this we need to see, you know, what the assets

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2 actually were and perform a valuation
3 ourselves.

4 Q. Okay. Any other recollection
5 about your discussions with Mr. King about
6 this e-mail other than what you just told me?

7 A. Not specifically.

8 Q. Okay. Did you have any
9 discussions about this with anyone else?

10 A. I don't think I would have
11 particularly.

12 Q. You don't recall?

13 A. I don't recall though.

14 Q. Okay. Do you have an
15 understanding -- was any action taken within
16 Barclays as a result of this e-mail being
17 sent?

18 A. Not to my knowledge.

19 Q. Okay. Just so I break that down a
20 little bit, you don't know whether Mr. LaRocco
21 or Mr. Keegan did anything as a result of this
22 e-mail exchange?

23 A. Yeah, I don't know if they did
24 anything. They might have. They might not
25 have.

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2 Q. Okay. And you don't know whether
3 Mr. Malloy, Mr. LaRocco, did anything as a
4 result of this e-mail exchange?

5 A. I wouldn't have knowledge of that.

6 Q. Okay. Would you know whether Mr.
7 King took any action or had the PMTG group
8 take any action as a result of this e-mail?

9 A. I wouldn't necessarily know but
10 not to my knowledge.

11 Q. Okay. Could we just take a minute
12 and look at some of these numbers.

13 A. Um-hum.

14 Q. So what is your understanding of
15 what these numbers represent just as a group?

16 MR. STERN: You want to take them
17 as a group or line by line?

18 Q. Whatever is easiest for you.

19 A. I would say the first five lines
20 from Fed Wire Securities down through Today
21 DTC Collateral reflects a number of, you know,
22 general groupings of assets that Barclays
23 either would have had custody of or would have
24 expected to receive custody of. And the
25 numbers would reflect some measure of the size

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2 of those populations of assets.

3 Q. Size meaning the value of those
4 assets?

5 MR. STERN: Objection to the form.

6 Q. Well, let me be clear. I mean,
7 it's not the number of CUSIPS or the number of
8 securities, right?

9 A. No, I don't think so. It would
10 be -- it would be some representation of
11 somebody's marks but certainly not Barclays'
12 because we had just received -- we were in the
13 process of figuring out what these actual
14 portfolios were.

15 Q. So you understand these to be
16 dollar figures in billions of dollars, right?

17 A. Yes. Dollars in billions.

18 Q. And do you know whose -- well,
19 before we get to that do you see where it
20 says, "Collateral received from Lehman on Fed
21 facility"?

22 A. Um-hum.

23 Q. What did you understand that to
24 mean?

25 A. Well, I suppose -- and I have to

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2 say I don't agree necessarily with what Marty
3 wrote there.

4 Q. Sure.

5 A. I think he intended it to mean
6 that these are assets that would then secure
7 the 45 billion of lending that Barclays was
8 doing. But I don't agree with him necessarily
9 because some of these items I'm not sure were
10 actually part of the repo transaction.

11 Q. Well, let me just --

12 A. But I don't necessarily have...

13 Q. When you talked about the 45
14 billion in lending you were talking about the
15 September 18th repo transaction?

16 A. Yes. That's what I think the line
17 that says repo cash amount represents.

18 Q. Okay. That's --

19 A. Towards the bottom.

20 Q. So that's \$45 billion, right?

21 A. Yes.

22 Q. And that's the amount that
23 Barclays effectively paid Lehman through the
24 September 18th repo transaction, right?

25 A. Right.

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Q. And the Total Securities/Cash Received, do you see that line, which is 52.19 billion?

A. Um-hum.

Q. What does that represent?

A. That's the sum of the numbers attributed to the five -- the five blocks of assets that Barclays received or expected to receive.

Q. Okay. So that's the value of the collateral that was posted in support of Barclays paying \$45 billion, right?

MR. STERN: Objection to the form.

Could you repeat the question, Francis?

(Record read.)

MR. STERN: You can answer.

A. I wouldn't say that. We, at that point, hadn't had a chance to look at the securities; so therefore had -- you know, couldn't really put a value on it, per se.

So these numbers -- I think that number is a proxy but subject to -- a proxy for value, but subject to quite a bit of needed due diligence.

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Q. Well, who put this value on it, the 52.19?

A. I don't -- for -- I think the first two line items were tied -- those numbers tied to schedules that I referred to earlier. The e-mails -- the two e-mails that I received at 1:01 a.m. and 9:45 a.m.

Q. Just so we have a clean record you're referring to the Fed Wire securities valued at 28.6 billion and DTC cash at 15.9 billion?

A. Those are the two lines I'm referring to.

Q. Okay.

A. And in those schedules were marks that I understood to be from the custodian function at Barclays -- not at Barclays -- at BoNY, that totaled to those numbers.

Q. All right. So those -- the 28.6 and the 15.9 are valuations placed on these securities by BoNY?

MR. STERN: Objection to the form.

You can answer.

Q. That means you can -- you can

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still answer.

A. Oh. As I just said, I don't want to use the word value because, you know, BoNY's function in this thing, they're a custodian. They're not in the business of trading securities. They're not even really in the business of valuing securities. They just hold assets. And they have

infrastructure that attempts to estimate, if you will, you know, the value of securities.

But I think it's considered -- especially in a market like this, it's considered -- it would be hard to -- there was certainly no assumption at Barclays that BoNY's marks were anywhere close to the realizable value of securities, necessarily.

Q. Okay. Well, BoNY's the custodian for the September 18th repo transaction, right?

A. Right.

MR. STERN: Objection to the form

Q. And is it normal course that the custodian in a repo places a value on the securities?

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MR. STERN: Objection to the form.

You can answer if you know.

A. I don't necessarily know what's customary in repo.

Q. Okay. Have you ever been involved in any other repo transactions before?

A. Yes.

Q. And did the custodians place a value on it?

MR. STERN: Objection to the form.

A. The repos I would have been involved in were probably -- were for liquid securities. So we would never have looked to a custodian for values.

Q. Okay. The reason I'm asking is I've been told that it's normal course for a custodian to place a value on the securities that are the subject of a repurchase transaction.

A. Um-hum.

Q. Do you have any reason to suspect that that's not the normal course of business?

MR. STERN: Hold on. Hold on. I think this really does go beyond the

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<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 equity securities. Corporate refers to</p> <p>3 corporate debt.</p> <p>4 Q. Okay.</p> <p>5 A. And, in fact, it was comprised of</p> <p>6 quite a number of other types of securities as</p> <p>7 well.</p> <p>8 Q. Now, is the composition of that</p> <p>9 15.9 entry different than the composition of</p> <p>10 the .3 entry for DTC cash?</p> <p>11 A. Those populations were made up</p> <p>12 of -- the compositions were different.</p> <p>13 Q. In what way?</p> <p>14 A. But they were --</p> <p>15 Q. In what way?</p> <p>16 A. Just in -- you know, I don't think</p> <p>17 there was any effort made to preserve, you</p> <p>18 know, exact consistent percentages of equities</p> <p>19 versus corporate debt versus mortgages versus</p> <p>20 other types -- asset classes represented.</p> <p>21 Q. Well, I guess my question is do</p> <p>22 you know why there's two separate entries for</p> <p>23 DTC cash, one with -- why didn't they just</p> <p>24 combine them into one entry?</p> <p>25 A. Well, I would assume that it's</p>	<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 because the last one is today. So -- it's</p> <p>3 marked today. So presumably it represented</p> <p>4 securities -- I am assuming that it</p> <p>5 represented securities that were received on</p> <p>6 that Friday.</p> <p>7 MR. STERN: I think he's asking</p> <p>8 why there are two lines for DTC cash,</p> <p>9 one 15.9 and one .3.</p> <p>10 Q. It was a bad question. Let me</p> <p>11 just restate the question.</p> <p>12 You'll see one with a 15.9 mark</p> <p>13 and one with a .3 mark, right?</p> <p>14 A. Yes. Yes.</p> <p>15 Q. Why are there two separate entries</p> <p>16 fore DTC cash?</p> <p>17 A. Right. The 15.9 is made up of</p> <p>18 securities. The .3 I never saw a security</p> <p>19 list for. So it may have been cash cash.</p> <p>20 Q. Okay. You don't know.</p> <p>21 A. I don't know.</p> <p>22 Q. Okay.</p> <p>23 Now, when you look down at the</p> <p>24 bottom -- oh, okay. Let's go to the right</p> <p>25 again. You'll see an entry -- I assume it's</p>
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<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 to the right of the repo cash --</p> <p>3 A. Um-hum.</p> <p>4 Q. -- column.</p> <p>5 It says 1.7 of this was posted to</p> <p>6 BoNY?</p> <p>7 Do you see that?</p> <p>8 A. Yep, I see that.</p> <p>9 Q. What does that mean?</p> <p>10 A. I have no idea what that refers</p> <p>11 to.</p> <p>12 Q. Okay. Now, further down I think</p> <p>13 it's on the line that's entitled Today DTC</p> <p>14 Collateral, it also says Equity/Corp.</p> <p>15 Do you see that?</p> <p>16 A. Yep.</p> <p>17 Q. So that's just describing the</p> <p>18 composition of that pool of collateral?</p> <p>19 A. Right. The fact that those were</p> <p>20 made up securities.</p> <p>21 Q. Okay. Now, at the bottom it says</p> <p>22 Total securities/cash received, 52.19 billion.</p> <p>23 Do you see that?</p> <p>24 A. Um-hum, yep.</p> <p>25 Q. So am I understanding you correct</p>	<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 to say that you don't know if that was, in</p> <p>3 fact, received even though this entry says</p> <p>4 received?</p> <p>5 A. Well, in fact, I know that some of</p> <p>6 it wasn't because that 7 billion repo cash</p> <p>7 wasn't in the long -- you know, eventually. I</p> <p>8 don't know what people knew at the time.</p> <p>9 Q. Okay. But over that weekend or on</p> <p>10 Friday the 19th, the 7 billion had not been</p> <p>11 received?</p> <p>12 MR. STERN: Objection to the form.</p> <p>13 A. I don't know.</p> <p>14 Q. Don't know? Okay.</p> <p>15 And do you have any understanding</p> <p>16 of whether the rest of it was received?</p> <p>17 MR. STERN: Objection to the form.</p> <p>18 A. Yeah. I think we already</p> <p>19 discussed why it's hard for me to say if I</p> <p>20 agree or not because --</p> <p>21 Q. So you don't know.</p> <p>22 A. I don't know.</p> <p>23 Q. Okay. When -- you see the line</p> <p>24 Excess Collateral, 7.9?</p> <p>25 A. Yes.</p>

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Q. And I assume that's the difference between 52.19 and 45 billion, correct?

A. Yep.

Q. Is that what you under -- do you understand under -- is that what you understood to be the haircut associated with the September 18th repo?

MR. STERN: Objection to the form.

A. I don't think haircut is a very precise term.

Q. Okay.

A. But -- I don't think it's a very precise term. But I do agree that it's sort of the excess of this sort of number, 52.19, which is a proxy for some measure of what was received over the loan amount.

Q. I appreciate haircut's kind of a colloquial term. We've heard it in all these depositions. So is it fair to say -- and I am trying to take into account your statements previously about valuation, that the 7.19 is the excess of the total securities in cash received as collateral -- I'm sorry. Let me rephrase it.

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Is the 7.19 the excess of the collateral that was posted in support of the September 18th transaction over and above the amount that Barclays paid? Taking into account that those numbers are BoNY values, not necessarily Barclays' values?

MR. STERN: Objection to the form.

Let me hear the question again.

You're just totally ignoring his responses and using your terminology despite his testimony.

MR. HINE: No, I'm not, Jack.

MR. STERN: Yes, you are.

MR. HINE: No, I'm not.

MR. STERN: It's very misleading and the record will reflect that --

MR. HINE: And you can stop coaching the witness.

MR. STERN: I'm not coaching the witness.

MR. HINE: If you have an objection to form, put it on the record.

MR. STERN: I am not coaching the witness. I've been silent throughout

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this. But, you know, it just goes too far.

MR. HINE: Let's read the question.

MR. STERN: It just goes too far.

MR. HINE: Read the question.

MR. STERN: You know what you're doing. You know very well what you're doing and it's highly misleading.

MR. HINE: And you're coaching the witness, Jack, so put an objection to form on the record and that's it.

MR. STERN: This witness does not need to be coached, okay?

MR. HINE: I'm not trying to mislead him. I'm trying to ask a question. So you stated your objection. Fine. Let's move on.

MR. STERN: You really should relax. You really should relax. I want the question reread. And you really should stop asking misleading questions.

MR. HINE: Please read the question back.

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(Record read.)

A. I wouldn't characterize them as excess. The reason is because I've already stated my -- the fact that I don't think 52.19 is a value and obviously we've also discussed the fact that the 7 billion repo cash wasn't eventually received.

So then the problem is the 45 of course is just a dollar number. It's an amount of cash that Barclays provided whereas 52.9 isn't an equivalent. It's a proxy.

So I don't think colloquially -- you know, it says excess collateral here. But it's not really excess in the sense that you have more. It's just the mathematical difference obviously. And that's meant to -- you know, that's meant to do all kinds of things including adjust for uncertainty about what the actual value of the securities is.

Q. So you take issue with Mr. Malloy's use of excess collateral in this document; is that right?

MR. STERN: Objection to the form. Take issue. You can answer.

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A. I think if -- everyone knows what he means but I think it's not very precise terminology, no.

Q. Okay. And what do you understand the Margin Percentage entry to entail?

A. I guess he's just expressing as a percentage that 7.19 number of -- I can't tell -- one of the other -- one of the two numbers above it. Probably the 7.19 divided by 52.19.

Q. Okay. So that's how it's calculated but what it does mean?

A. He's just expressing as a percentage the same concept he's expressing with the 7.19.

Q. Do you have an understanding of what the term "margin" means in connection with a repo transaction?

A. Margin is a very commonly used -- margin has a lot of different meanings, actually, in finance. So I don't know why he chose that in particular. Very often when I hear margin I actually think of an interest rate but that's obviously not how it's being

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used.

Q. Well, but how do you think it's being used in this document?

A. I think I would just refer to, you know, the conversation we had about the 7.19 number. I don't think it's in -- it's not in excess in the sense again, you know, more than the 4.45. But it's just a measure of -- it's just -- it's just a measure of to what extent the proxy for the asset side of the balance sheet exceeds the 45 million.

Q. You don't really know what Mr. Malloy meant by the use of the term margin; is that what you're saying?

MR. STERN: Objection to the form.

A. I guess I know what I just said. Why he chose margin instead of just percentage, I don't know.

Q. Well, is it also possible that he was referring to amount of return Barclays was going to get on its investment of \$45 billion?

MR. STERN: Objection to the form.

A. I don't think so.

Q. Why not?

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A. It would just not have occurred to me to read it that way.

Q. Okay. Do you know what Mr. Malloy meant when he wrote it?

A. I think what he meant was that is -- that is -- I guess I don't.

Q. Okay.

(Deposition Exhibit 349B, document bearing production numbers BCI-EX-00070958 through BCI-EX-00070961, marked for identification as of this date.)

BY MR. HINE:

Q. Mr. Yang, I'm handing you a copy of a document marked Exhibit 349B which is admittedly a cut-off version of a spreadsheet because I didn't want to enter a huge number but my questions are really going to be about --

MR. STERN: Is this part of the 30(b)(6)? I don't think this is listed in the 30(b)(6).

MR. HINE: The questions will relate to the 30(b)(6) topic, Jack.

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MR. STERN: No, no, no. We're going to limit this deposition, particularly given the misleading nature of the questions, to the documents that are listed in topics 4 and 5.

MR. HINE: Okay. I'm going to ask him about --

MR. STERN: And I'm going to instruct the witness not to answer any other questions.

MR. HINE: All right. So you're not going to -- you're going to instruct the witness to answer no questions about any other document --

MR. STERN: I am limiting --

MR. HINE: Just let me get it on the record, Jack. All right?

MR. STERN: I'll tell you what I'm doing. I'm limiting this deposition to the topics that are noticed as topics 4 and 5, period.

MR. HINE: My question is I have documents to ask him about that relate to those topics. Are you going to

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instruct the witness not to answer questions about any document other than the three mentioned on the notice?

MR. STERN: Yes.

MR. HINE: Okay.

MR. STERN: And I dispute your characterization of other documents. I have no idea whether what you intend to do here is directly related.

MR. HINE: We'll never know because you're not going to permit him to answer, right?

MR. STERN: We're going to limit it to the documents in the notice.

MR. HINE: I'm going to ask a question and you can instruct him not to answer.

MR. STERN: That is ridiculous. That's a waste of time. And we're going to leave here unless you focus on the topics --

MR. HINE: Jack, I'm just going to make a record.

MR. STERN: Listen, we're going to

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leave this deposition -- I'm putting you on notice. We're going to leave this deposition if you don't proceed to ask about the topics 4 and 5.

MR. HINE: I'm going to ask a question. It is about topics 4 and 5.

MR. STERN: It is not --

MR. HINE: Just let me finish, will you? I let you finish.

MR. STERN: No. If you have the documents that are listed in topic 5, ask about those documents. Otherwise we are leaving this deposition, sir.

MR. HINE: I am going to do that. But I just want to make a clear record that you're instructing him not to answer about any other topics; is that right?

MR. STERN: If you don't move on to topic 5 we are leaving now. It's your choice. It is your choice. Mark the documents listed in 5 or we leave this deposition now.

MR. HINE: Just answer my

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question.

MR. STERN: It is your choice, Bill.

MR. HINE: I just want to make -- Jack, I just want to make clear record. I understand your objection.

MR. STERN: I am making a clear record. And I am telling you if you do not mark and move on to topic 5 we are leaving. We're not going to put up with this nonsense.

MR. HINE: All right. So you're going to leave if I mark any exhibit other than the ones listed in topic 5?

MR. STERN: Correct. Move on to topic 5.

BY MR. HINE:

Q. I'm still on the first exhibit, topic 4, Mr. Yang.

A. Um-hum.

MR. STERN: Bill, I think this deposition is over.

MR. HINE: Jack, I'm not finished with topic 4.

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MR. STERN: Okay. You're on which exhibit?

MR. HINE: I'm still on the exhibit we were talking about.

MR. STERN: Which is -- you had marked an exhibit --

MR. HINE: Which is Exhibit 144A.

MR. STERN: Okay. So let's put aside 349B.

MR. HINE: I am back on Exhibit 144A which is the exhibit listed in topic 4 of the notice.

MR. STERN: I thought you had finished that.

MR. HINE: I'm not.

MR. STERN: Go ahead.

MR. HINE: The document I was attempting to introduce relates to.

BY MR. HINE:

Q. My question for you, Mr. Yang, is have you had any discussions with -- well, let me take a step back and just ask a general question.

We talked about the \$52.19 billion

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2 number on this chart, right?

3 A. Um-hum.

4 Q. And if you take away the 7 billion
5 in cash you're left with about \$45 billion,
6 correct?

7 A. Um-hum.

8 MR. STERN: Objection to the form.

9 Q. 52 minus 7 is 45; is that right,
10 Mr. Yang?

11 A. Yes.

12 Q. Was there ever any discussions at
13 Barclays about whether, in fact, the assets
14 delivered to Barclays as part of the September
15 18th repo were properly valued by BoNY at
16 about \$45 million? And, again, I'm talking
17 about the securities, not the cash component.

18 A. Um-hum. I actually think that the
19 broad assumption is -- maybe I'll take a step
20 back.

21 The securities reflected here that
22 comprise this portfolio, you know, obviously
23 September was a time when, you know, markets
24 were generally illiquid. And many of these
25 securities were securities that even in normal

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2 of securities at about 42.9 billion?

3 A. I generally didn't have
4 conversations with Lehman people.

5 Q. Okay. Did you ever hear any
6 mention of the notion that that pool of
7 securities -- and, again, I'm putting aside
8 the cash just so we're clear.

9 A. Um-hum. We're talking about the
10 first two.

11 Q. I'm putting aside the 7 billion in
12 cash.

13 A. Right.

14 Q. Okay. Did you ever hear any
15 discussion during the week of September 15th
16 or even thereafter that Lehman placed a value
17 on that pool of securities at 42.9 or
18 thereabouts?

19 A. I can't really recall.

20 Q. Okay. Do you recall any
21 discussions or meetings between Barclays folks
22 and Lehman folks about how to value that pool
23 of securities?

24 A. Not as a whole or in general. I
25 do know that there were occasional exchanges

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2 times would be considered illiquid securities.

3 So our presumption was that BoNY's
4 marks would not have been accurate.

5 Q. When you say illiquid you mean
6 what?

7 A. First of all, that pricing
8 information isn't easily available. In many
9 cases these were securities that would not
10 transact in the market -- well, first of all,
11 would be bilateral transactions and -- with no
12 pricing posted to a general market, sort of
13 group exchange or listing. And so unless you
14 were one of the two parties to the transaction
15 you wouldn't know where it traded. And,
16 moreover, some of these securities traded very
17 infrequently.

18 Q. Okay. And so because they're
19 illiquid in that sense it was tough to put a
20 price on them? Is that what you're saying?

21 A. Exactly. And because BoNY wasn't
22 in that business we assumed they would just
23 have the wrong prices.

24 Q. Okay. So did you ever hear people
25 from Lehman saying that they valued that pool

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2 at different points in time about, you know,
3 at least getting Lehman's impression of
4 certain positions.

5 Q. Okay. And was it your impression
6 that Lehman's valuation of these securities
7 was less than the BoNY values?

8 A. It is my impression that it was
9 less than the BoNY values.

10 Q. Do you know why?

11 A. Our general assumption was -- when
12 I say BoNY's prices were wrong, they were
13 probably wrong in the sense that they were out
14 of date especially for illiquid securities.
15 In a falling market that means you end up with
16 an overestimate of marks.

17 Q. So your impression or working
18 assumption during that week was that BoNY's
19 marks were overvalued?

20 A. Right.

21 Q. And how about Lehman's marks; do
22 you have any impression about whether their
23 marks were accurate?

24 A. This is by know means
25 representative of the entire portfolio but on

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2 some of the most illiquid positions in the
3 discussions we had with them, you know, and
4 this is not in general, these are specific
5 incidents -- you know, specific securities, so
6 it may not mean anything, but I do know I
7 found that their prices were higher than I
8 would have assigned to them.

9 Q. So in the end did Barclays assign
10 a value to this pool of securities that's
11 represented by the BoNY mark of 45 billion?

12 A. Well, as I said, that 15.9
13 population ended up not being exactly accurate
14 because I said some securities did disappear.
15 Or, you know, we just eventually didn't
16 receive.

17 But eventually all of the
18 securities that we did receive, we did value
19 at because -- but I don't know what that
20 number would have come out to.

21 Q. You don't know the value that
22 Barclays placed on that pool of securities?

23 A. Right. Because of the process.
24 What we did is we booked everything in and
25 then, you know, obviously different desks had

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2 responsibility for different types of assets.
3 And then everyone marks it in their systems
4 and that flows upstream.

5 Q. So when you first booked them in
6 did you book them in at the BoNY marks?

7 A. I don't recall what price we used
8 for booking. It wouldn't have been ours
9 because we didn't have them yet.

10 Q. Ours meaning Barclays?

11 A. Barclays. Because we hadn't
12 calculated them yet.

13 Q. I think I understood you what just
14 said but let me see if I --

15 MR. STERN: I think this is now
16 going beyond the scope of this
17 deposition. I think Barclays' booking
18 and marking of the security positions
19 that it received in this transaction is
20 beyond the scope of this deposition.

21 MR. HINE: So are you instructing
22 him not to answer?

23 MR. STERN: Yes.

24 MR. HINE: All right.

25 (Pause on the record.)

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2 MR. HINE: I'm going to get to the
3 two documents listed in deposition
4 notice item number 5 but I want to state
5 on the record our objection to the
6 restricting of the scope of this
7 deposition unduly and we are reserving
8 our rights to recall Mr. Yang either as
9 a 30(b)(6) or somebody else as a
10 30(b)(6) and to recall Mr. Yang in his
11 personal capacity. I just want to put
12 it on the record so I will follow your
13 objection and I'm going to stick to the
14 three documents that are in that notice.

15 MR. STERN: Fine. You've never
16 noticed Mr. Yang's deposition
17 personally. He's a 30(b)(6) witness.
18 There are many, many, many documents
19 relating to categories of securities and
20 you could go on for days and days. But
21 this is a limited 30(b)(6) deposition.
22 You will have other witnesses as you
23 know currently on the schedule who will
24 be able to address many of the questions
25 you have sought to ask here.

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2 MR. HINE: Okay.

3 MR. STERN: Okay.

4 MR. HINE: You done?

5 MR. STERN: Yes.

6 MR. HINE: Okay. I'm just noting
7 our objection to your undue restriction
8 to the scope of this deposition and we
9 reserve our rights. So with that said
10 let me introduce the next exhibit.
11 Would you mark that.

12 (Deposition Exhibit 350B, document
13 bearing production numbers
14 BCI-EX-00012161 through BCI-EX-00012162,
15 marked for identification as of this
16 date.)

17 BY MR. HINE:

18 Q. Mr. Yang, I'm handing you a copy
19 of a document marked as Exhibit 350B.

20 A. Um-hum.

21 Q. When you've had a moment to look
22 at it please let me know.

23 (Document review.)

24 A. Okay. I'm ready.

25 Q. You've had a chance to look at it?

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2 A. Yeah.
3 Q. Okay. Have you ever seen this
4 document before?
5 A. Yes.
6 Q. Could you tell me what it is?
7 A. It's an e-mail from Dan Long, who
8 is someone who worked for me, to Marty Malloy,
9 Kevin Walker, and myself. I believe Kevin
10 Walker worked with Marty on sort of the repo
11 business.
12 Q. Okay. And what's the purpose of
13 this e-mail?
14 A. So this is early Friday afternoon.
15 As I previously referenced, we had received --
16 I had received those two e-mails listing --
17 listing the securities that corresponded to
18 the 28.6 and the 15.9 that we just discussed.
19 What I had asked Dan to do -- at this point we
20 understood our objective to start the process
21 of actually trying to ascribe value to this
22 very large portfolio.
23 What I'd asked Dan to do was to
24 compile those securities simply by CUSIP and
25 quantity, whether that be notional amount or

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2 this page?
3 A. No, no. They were other e-mails.
4 Q. Okay. So this is -- if you turn
5 to the second page of this document --
6 A. Um-hum.
7 Q. -- it says -- it's an e-mail from
8 Dan Long.
9 A. Um-hum.
10 Q. It says, "Please find attached the
11 compiled master list of the DTC and Fed Wire
12 from Lehman on 9/18."
13 Do you see that?
14 A. Um-hum.
15 Q. Now, that, to your understanding,
16 corresponds to the entries on the Exhibit 144A
17 for Fed Wire securities and DTC cash marked at
18 15.9 billion?
19 MR. STERN: Could I hear that
20 again.
21 (Record read.)
22 MR. STERN: Objection to the form.
23 You can answer.
24 A. The file was intended to
25 correspond to those.

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2 number of shares, into sort of a master list
3 that we could work off of.
4 Q. Okay. So the two previous e-mails
5 you referenced, did they include lists?
6 A. Yes.
7 Q. So is it correct to say that he
8 took those two lists and compiled them into
9 one? Is that what's going on here?
10 A. That's exactly right.
11 Q. And is that one entitled Master --
12 do you see this icon on the upper left-hand
13 corner?
14 A. Yes.
15 Q. Is that the compilation that
16 you're talking about?
17 A. That was what Dan produced. There
18 were some issues with that file. It's purely
19 technical ones. But the goal was to be a list
20 of CUSIPS and the quantities.
21 Q. And I forget the times you
22 mentioned but you mentioned two e-mails
23 previously.
24 A. Right.
25 Q. Are they the e-mails lower down on

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2 Q. I guess -- let me ask a clarifying
3 question.
4 A. Yeah.
5 Q. You see on Exhibit 144A, the
6 previous exhibit we talked about, there's
7 three different entries that say DTC, right?
8 A. Right.
9 Q. Two for cash and one says Today
10 DTC Collateral.
11 Do you see that?
12 A. Um-hum.
13 Q. So when Mr. Long on the second
14 exhibit, 350B, is referring to DTC, do you
15 understand him to be including all three of
16 those pools of securities?
17 A. No. The intent would have been to
18 just capture the -- well, the Fed Wire
19 securities and then the first -- the DTC line
20 item.
21 Q. The one marked as 15.9?
22 A. Right.
23 Q. Okay. Now, before we get to the
24 attachment at the top he writes, "Thanks,
25 Jasen, for your blessing on this master list."

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<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 So does that mean you reviewed it?</p> <p>3 A. I did review it. It was a very</p> <p>4 large list. So it wasn't a question of line</p> <p>5 by line. But you'll see that this e-mail --</p> <p>6 you know, this is the third e-mail from Dan</p> <p>7 and each time he had actually attached a file</p> <p>8 where I found a problem. Just a technical</p> <p>9 issue with the compilation. And I asked him</p> <p>10 to revise it. And so at this point, you know,</p> <p>11 I knew the file still had issues but it was</p> <p>12 usable.</p> <p>13 Q. Usable. What do you mean by that?</p> <p>14 A. Well, simply that the technical</p> <p>15 issues that I identified previously, he had</p> <p>16 resolved.</p> <p>17 Q. The technical issues have to do</p> <p>18 with just the listing of individual securities</p> <p>19 or --</p> <p>20 A. Yeah, yeah. The first technical</p> <p>21 issue was simply that a certain security might</p> <p>22 show up multiple times in the list.</p> <p>23 Q. Okay.</p> <p>24 A. I asked him to add those up. And</p> <p>25 then one other issue he had was just that some</p>	<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 of the CUSIPS in the process of being moved</p> <p>3 around got corrupted.</p> <p>4 Q. Okay. I've been told in some</p> <p>5 other depositions that there was a</p> <p>6 reconciliation process that went on between</p> <p>7 Lehman and Barclays as to the list of CUSIPS</p> <p>8 that came over in connection with the</p> <p>9 September 18th transaction.</p> <p>10 Are you referring to that process</p> <p>11 in your last answer?</p> <p>12 A. No, no.</p> <p>13 Q. Okay. So this is --</p> <p>14 A. Purely just copying CUSIPS and</p> <p>15 amounts out of one -- you know, a number of</p> <p>16 files all into one big file.</p> <p>17 Q. Okay. So the correction of the</p> <p>18 technical issues that you mentioned did not</p> <p>19 involve meetings with Lehman and reconciling</p> <p>20 lists of securities; is that right?</p> <p>21 A. No, no.</p> <p>22 Q. No, they did not?</p> <p>23 A. No, they did not.</p> <p>24 Q. Okay.</p> <p>25 MR. HINE: Let's mark this.</p>
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<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 (Deposition Exhibit 351B, document</p> <p>3 bearing production numbers BCI 000878</p> <p>4 through BCI 000879 with attachment,</p> <p>5 marked for identification as of this</p> <p>6 date.)</p> <p>7 BY MR. HINE:</p> <p>8 Q. Mr. Yang, I'm handing you a copy</p> <p>9 of exhibit marked as Exhibit 351B.</p> <p>10 A. Um-hum.</p> <p>11 Q. Which is the same e-mail only it</p> <p>12 contains an attachment as you'll see.</p> <p>13 A. Right. Yes, I see that.</p> <p>14 Q. And then I don't expect you to go</p> <p>15 line by line through this thing but is that</p> <p>16 your understanding of what was the master list</p> <p>17 assembled by Mr. Long?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Now, at this point in time</p> <p>20 there are no -- well, maybe let me ask another</p> <p>21 question.</p> <p>22 You'll see on that list there's</p> <p>23 two columns.</p> <p>24 A. Um-hum.</p> <p>25 Q. One is CUSIP, correct?</p>	<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 A. Um-hum.</p> <p>3 Q. And the other says Par Notionals.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. What does that mean?</p> <p>7 A. He's using shorthand -- a large</p> <p>8 number of different types of securities</p> <p>9 represented on this list including, you know,</p> <p>10 shares of stock, as well as bonds, and</p> <p>11 preferred stock and things like that. So</p> <p>12 he's -- by par/notionals he's using shorthand</p> <p>13 for whatever the appropriate convention is for</p> <p>14 the number -- for a quantity for that CUSIP</p> <p>15 type.</p> <p>16 So by -- for example, for common</p> <p>17 stock he was -- used number of shares even</p> <p>18 though his heading doesn't reflect that. And</p> <p>19 for bonds he generally used notional amounts.</p> <p>20 I suppose those are the two large categories.</p> <p>21 Q. So just referring back to the</p> <p>22 opening e-mail where you say summing -- or</p> <p>23 he -- sorry. Mr. Long says, "Summing to 88</p> <p>24 some-odd billion."</p> <p>25 Do you see that?</p>

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A. Yes.

Q. Notional?

A. Yeah.

Q. So he's referring to the sum of this column on the spreadsheet?

A. Right. Yes. He's referring to the sum.

Q. And did I understand you correctly that some of the entries are in dollars and some are in shares?

A. Right. So as a result the sum itself is a meaningless number. It's simply a checksum. So that, you know, if we had another list we could -- and it added up to the exact same number, it would be an incredible coincidence if they weren't the same list.

Q. Okay. So you're not using it for any purpose other than to verify that you have all the entries on this.

A. Yeah.

Q. Okay. So it's -- all right. I think you answered my question. It's a meaningless sum in the sense that it's not

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dollars and cents or it's not shares. It's just your method of tracking whether he has all the entries correct?

A. Yes.

Q. And did he end up having all the entries correct?

A. Well, this was Friday afternoon. And the short answer is that he -- we got a revised list on Saturday, and as I sort of previously referenced, some of the things -- the securities in this list didn't show up in sort of the revised list that we got from operations. There was never an explanation for that.

Q. Was that the result of a reconciliation between Lehman and Barclays at all?

A. I don't know. I don't know how -- what caused operations to refresh.

Q. I guess I misunderstood you. Mr. Long works for you, correct?

A. Yes.

Q. He's not in operations, is he?

A. No. But -- I should clarify. The

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two e-mails that we were compiling this list from, I don't know if we sent them to me but I could see -- but my understanding was they were produced by our operations department.

Q. Oh, okay.

Is it fair to say that if there was some kind of reconciliation going on between Barclays and Lehman that the operations department probably would have done that?

A. It seems quite likely.

Q. Okay.

A. I don't know. I wouldn't have direct knowledge of that.

Q. Okay. You yourself or your department -- let me just ask it differently.

A. Yeah.

Q. Do you know whether your department participated in any kind of reconciliation of CUSIP lists between Lehman and Barclays?

A. We didn't do that.

Q. Okay. So am I correct in understanding that you were sent two e-mails

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with lists of securities as you previously described --

A. Um-hum.

Q. -- and that all Mr. Long did was put them in a single file?

A. Right.

Q. Okay. And for what purpose?

A. The idea was to -- well, let's see. The idea was to put them all in one place. And then sort them into different types of securities so that we could figure out who we should go to to analyze value and risk manage those securities.

That was the premise.

The other thing that we intended to do with that was compare it to the list of securities that we sort of expected to receive.

Q. And did you do that?

A. We did over the course of the afternoon. And found that it wasn't what at least Dan and I were expecting.

Q. In what way?

A. Just that it was a different large

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2 portfolio of securities. We had been told to
3 expect another list.

4 Q. What were you told to expect?

5 A. We had been given another file
6 that we understood to represent the securities
7 that were held -- that were financed in
8 another facility the day before not provided
9 by Barclays. Provided by the Fed. And we
10 were told to expect that we would have -- get
11 substantially the same collateral. As it
12 turned out we didn't.

13 Q. I think I understand that. Are
14 you referring to a Fed facility where the Fed
15 provided funding to Lehman over the course of
16 the week of the 15th?

17 A. Right.

18 Q. So you were given a list by who?

19 A. I actually -- I was given the
20 list -- I mean, Stephen King forwarded it to
21 me but I don't remember where it came from.

22 Q. Okay. And that list was the
23 securities that you understood to be in
24 support of the Fed financing from earlier that
25 week?

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2 A. Right.

3 Q. And so that list ended up being --
4 again, I'm just trying to understand your
5 testimony. When you compared that list to
6 this list prepared by Mr. Long they were
7 different lists of securities?

8 A. Yes. They were different lists.

9 Q. Radically different or just a
10 couple?

11 A. Very substantial --

12 MR. STERN: Objection to the form.

13 A. Okay.

14 Q. You can answer.

15 A. Substantially different.

16 Q. Okay. And so what did you do to
17 try to figure out what happened?

18 A. In a certain sense that wasn't
19 part of my task.

20 Q. Okay.

21 A. You know, the task was to -- after
22 that was noted, our task was to value the
23 securities that we did have and risk manage
24 them.

25 Q. Okay. And did you eventually

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2 value the securities that are on this list?

3 A. There was what I would think of as
4 an updated version of this that was provided
5 to us over the weekend which, you know, as I
6 say, was eventually booked into all of the
7 Barclays -- various Barclays systems and
8 valued by the appropriate trading desk.

9 Q. And that was provided by the ops
10 people at Barclays?

11 A. Yes.

12 Q. So your department didn't create
13 that second list?

14 A. No, we didn't create that second
15 list.

16 Q. Okay. Can you read on the
17 covering e-mail it says -- again, this is from
18 Mr. Long. He says, "If you guys are
19 comfortable with this list then let's send to
20 Lehman for marks."

21 A. Um-hum.

22 Q. What was he referring to there?

23 A. Well, as I said, at this point our
24 task was to start assigning a value to this.
25 And since we understood that the securities

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2 came from Lehman, we thought it would be -- it
3 wouldn't hurt to ask them for their valuations
4 on these assets.

5 Q. And did they send them to you?

6 A. They -- I think I -- I don't -- I
7 think the short answer is no. I received a
8 number of files from them that had their marks
9 on certain securities. But -- and there was
10 some overlap with this but it wasn't in the
11 sense that they gave us their values on the
12 securities.

13 Q. So what did they give you?

14 A. Just files that contained their
15 valuations for certain securities but not --
16 but it wasn't necessarily, you know -- they
17 weren't necessarily the securities on this, in
18 this file, nor were they necessarily all of
19 the securities that we were interested in.

20 Q. So it was an incomplete list as
21 compared to your list.

22 A. Incomplete and sort of -- it was
23 just a different -- different set of
24 securities that they had marks for.

25 Q. So was there a marking process

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2 that took place on -- at or about this time to
3 reconcile your list with the Lehman marks?

4 A. No. Because what I'm trying to
5 say is that I don't think that I ever got
6 Lehman's marks on this population of
7 securities. I got their marks on another
8 population of securities which had some
9 overlap with this.

10 Q. And did you make any use of those
11 marks?

12 A. No.

13 Q. Because it was not -- because it
14 was hard to reconcile the two lists?

15 A. I think we ended up being -- this
16 afternoon we were most concerned with just
17 reconciling the lists.

18 MR. STERN: This afternoon is what
19 date?

20 THE WITNESS: The afternoon of
21 Friday, September 19th.

22 A. So there wasn't actually a
23 valuation process that occurred that Friday.
24 At least by myself.

25 Q. Okay. Could you describe for me

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2 what you mean by reconciling in that sense?

3 A. Well, it was that comparison with
4 the Fed facility list. You know, just the
5 simple task of telling whether or not this
6 list was -- how similar or different this list
7 was from the Fed facility list. Just that
8 simple task was what we focused on that
9 afternoon.

10 Q. And were you able to reconcile
11 those two lists?

12 A. Well, I think we just concluded
13 that they were very different lists.

14 Q. And when you say reconcile, are
15 you talking about reconciling within Barclays
16 or are you reconciling with Lehman?

17 A. No. Purely within Barclays.

18 Q. So you just -- when you say
19 reconciling in that sense are you just saying
20 you're comparing the two lists?

21 A. Yes.

22 Q. Okay. And was any action taken as
23 a result of the fact that the lists were
24 different?

25 A. I don't know.

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2 Q. Is it fair to say that if there
3 was, it was someone else doing it?

4 A. Right.

5 Q. Okay. And is that a function that
6 was probably undertaken by the ops people?

7 A. Well, in terms of -- the
8 comparison we were making was between what we
9 were expecting to receive and what was
10 provided to us. So that actually would have
11 been more of a commercial point that I assume
12 would have been handled by, you know, the team
13 negotiating the transaction.

14 Q. Okay. So you didn't -- you
15 weren't involved in that?

16 A. No.

17 Q. Okay. You mentioned that later on
18 sometime during that weekend there was an
19 updated version of this document produced,
20 correct? Again, I'm referring to the master
21 file.

22 A. The master. Yes. There was
23 another file that served as the master file.

24 Q. And it was still titled Master
25 File?

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2 A. I don't recall what it was titled.

3 I think it would -- it probably -- it
4 wasn't -- it didn't have the same name because
5 it was produced --

6 Q. Well, can I show you a document to
7 see if it is, in fact, the list you're talking
8 about?

9 A. Sure.

10 Q. Let me just mark it first.

11 (Deposition Exhibit 352B, document
12 bearing production numbers
13 BCI-EX-00013019 through BCI-EX-00013186,
14 marked for identification as of this
15 date.)

16 BY MR. HINE:

17 Q. Mr. Yang, I'm handing you a copy
18 of a document marked as Exhibit 352B.

19 A. Um-hum.

20 Q. Which is Bates stamped
21 BCI-EX-00013019 through -13020.

22 And my first -- again, I'm not
23 going to ask you detailed questions about the
24 whole thing. I just want to see if you
25 recognize this document.

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A. This -- I do. This isn't the revised master list that I was referring to that superseded the one we were just about.

Q. Okay.

A. It's basically the same list. But this actually has the comparison that I was just referring to what we were told to expect.

Q. Oh, so this is not the revised list that you said you received from ops later on that weekend?

A. No. This is basically the same list.

Q. Okay. But this is the -- this is a document reflecting the reconciliation that you just testified about?

A. Yes.

Q. And could you just explain to me how it's doing that?

A. So the columns A and B are the same as the other file.

Q. Okay. The other file meaning Exhibit 351B?

A. Yes.

Q. Okay.

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A. Or ought to be.

And then columns E and F show the quantities of that security that we were told to expect.

Q. Told to -- meaning the Fed --

A. The Fed.

Q. -- program?

A. Yes.

Q. Okay. What's the difference between column E and column F?

A. Simply whether that particular security was settled via the DTC or was settled via Fed Wire.

Q. Oh, so E is DTC and F is Fed Wire.

A. Right.

Q. Could you explain to me column D where it looks like yes and no or Y and N?

A. Right. It's titled Changed Item. But I don't -- I don't know what -- I don't know actually what it's doing.

Q. Okay. And I interrupted you. So how about G and H?

A. G is then the sum of E and F. So G is the column that should be comparable to

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column B. And then H is just the difference between the two.

Q. All right. So just so I understand, in the line numbered 8136, the entry in column H, 129 some odd thousand is the difference between B and G?

A. Yes.

Q. So column H is telling you what?

A. The quantity of the difference between what we've actually received of the security and what we were expecting.

Q. Okay. And when you say quantity, are we talking share numbers or price?

A. It would be either share numbers for equities or notional amounts for bonds.

Q. And there's no way to tell that from this chart, right?

A. No.

Q. Unless you had the CUSIP number you would look up the type of security?

A. That's right.

Q. Okay. And so what did this analysis tell you?

A. We can see that column H is -- if

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column H were all zeroes then we would conclude we had the same portfolio. You'll see that in many cases it's zero which means that we got the same amount of that security but in many, many cases it's also not zero.

Q. Okay. And the entries in column H reflect where there's a difference between the Fed program securities and the securities that you guys received on Friday, the 19th.

A. Yes.

Q. All right. And what did you do with this analysis in the end?

A. I think I conveyed to Stephen King and Marty Malloy that the populations were very different. I don't know what they did with that information. And then, you know, eventually we focused on valuing and risk managing the portfolio. The corrected portfolio that we received.

Q. Okay.

MR. HINE: And am I correct, Jack, that you're not going to let him testify about how he priced the portfolio?

MR. STERN: Well, that's not a

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2 subject of this deposition. I believe
3 you have other witnesses on the calendar
4 who can discuss that.

5 MR. HINE: I understand. But for
6 this purpose, for this forum --

7 MR. STERN: But otherwise your
8 presumption is correct.

9 MR. HINE: Okay. Could we just
10 take a little break and let me see if I
11 have anything else?

12 MR. STERN: Sure.

13 (Recess taken.)

14 BY MR. HINE:

15 Q. Back on the record.

16 Mr. Yang, I had a couple follow-up
17 questions about some issues we talked about
18 earlier.

19 A. Um-hum.

20 Q. If you refer back to Exhibit 144A.

21 A. Yes.

22 Q. I think you mentioned in the
23 course of your testimony you talked about
24 illiquid securities.

25 Do you recall?

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2 A. Yes.

3 Q. And the difficulty associated with
4 putting a price on them.

5 Do you recall that?

6 A. Yes.

7 Q. When you look at this entry on
8 Exhibit 144A for Fed Wire Securities, are
9 they -- is it fair to say that those are
10 typically liquid securities?

11 A. More so, yes.

12 Q. Okay. What types of securities
13 are embodied in what you folks call Fed Wire
14 securities?

15 A. Fed Wire securities are
16 essentially treasury securities. So bonds,
17 bills, notes.

18 Q. Okay.

19 A. And agency, which by that I mean
20 Fannie Mae and Freddie Mac securities. Now,
21 those are -- you know -- in the grand scheme
22 of things those are more liquid. Illiquid
23 Fanny and Freddy securities do exist because
24 they can include CMOs.

25 Q. Okay. I understand.

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2 A. But they're generally more liquid,
3 yeah.

4 Q. Is it fair to say as a general
5 rule that Barclays would have little dispute
6 with the BoNY values ascribed to those type of
7 Fed securities?

8 MR. STERN: Objection to the form.

9 Q. Let me rephrase it. You
10 previously said you had -- I think you said
11 you had -- the presumption that there would be
12 some problems with the BoNY values listed on
13 this document, right?

14 MR. STERN: Objection to the form.

15 Q. I'm just -- I'm not trying to
16 restate what you said. I'm just trying to
17 bring you back to your testimony.

18 MR. STERN: Except he used the
19 term "marks" so...

20 MR. HINE: Okay. Fair enough.

21 Q. Do you recall saying something
22 about the fact that you -- Barclays had some
23 kind of presumption or assumption that the
24 BoNY marks might not be accurate in this
25 context, correct?

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2 A. Right.

3 Q. Does that assumption apply equally
4 to the marks for Fed Wire securities, do you
5 think?

6 A. It's reasonable to say that we
7 would expect the differences to be bigger for
8 some of the DTC type securities than Fed Wire.
9 But I wouldn't say that -- I wouldn't say that
10 we would expect no disagreement on Fed Wire
11 securities.

12 Q. Fair enough. When you say bigger,
13 you mean -- do I understand you correctly to
14 be saying that the DTC securities would be
15 more illiquid than the Fed Wire securities?

16 A. To be very -- to be precise, the
17 most illiquid securities are all DTC settled.
18 Of course, there are also some liquid
19 securities that are settled via DTC.

20 Q. Okay. But looking at it as a pool
21 there's probably more illiquid securities in
22 the DTC entries here than in the Fed Wire
23 entry?

24 A. Yes.

25 Q. Okay. So, to your recollection,

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2 did Barclays end up having the most concerns,
3 if you will, about the pricing -- or about the
4 marks BoNY had placed on the DTC securities?

5 A. Yes.

6 Q. Could I refer you back to
7 Exhibit 351B. And I just wanted to ask you a
8 question about -- well, let me just ask a
9 lead-up question.

10 Have you ever heard the term
11 Schedule A used in connection with the
12 Barclays/Lehman transaction?

13 A. Yes.

14 Q. And what did you understand
15 Schedule A to be?

16 A. Schedule A was meant to be the
17 securities that were acquired on -- that were
18 received on September 18th as part of this
19 assumed repo transaction.

20 Q. Okay. And who prepared Schedule
21 A?

22 A. Like all things, it was a
23 collaborative process. But I was involved in
24 preparing part of it. But, in fact, the
25 primary data source was Lehman. I believe we

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2 reviewed what they gave us and reformatted it.
3 But the data basically came from Lehman.

4 Q. Okay. I guess my question is this
5 master list that we talked about,
6 Exhibit 351B, is that in any way an early
7 version of Schedule A or a precursor to
8 Schedule A?

9 A. Conceptually this master list
10 should have been similar. You know, it
11 conceptually should have been Schedule A
12 except we know that there are some issues with
13 this list.

14 Q. So did you -- when you eventually
15 did receive Schedule A or a version of
16 Schedule A, did you try to reconcile it
17 against this master list?

18 A. Well, this was -- master list was
19 superseded by, you know, another list, another
20 similar list. We did do a comparison. We did
21 do a comparison but didn't have time to check
22 it line by line.

23 Q. You did a comparison between what
24 and what?

25 A. Between what Lehman provided as

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2 the draft Schedule A and what -- and successor
3 to this master list that we had.

4 Q. And by the successor you're
5 talking about the one that the ops people
6 provided you?

7 A. Right. What I should clarify is
8 when I -- the successor list is the list we
9 actually worked off of. The terms of
10 assign -- booking trades and assigning them to
11 different desks for valuations or valuing it
12 ourselves.

13 That list did not distinguish
14 between securities received on Thursday as
15 part of the repo and securities received
16 subsequently. So including on Friday, the
17 19th.

18 So when we did the comparison
19 between what Lehman provided us as the draft
20 Schedule A, that list, of course they were
21 different because they were meant to be
22 different but we did do a comparison to see
23 that -- you know, it seemed approximately
24 correct.

25 Q. Okay. Just so I understand what

1 J. YANG - HIGHLY CONFIDENTIAL
2 you're talking about, the successor list that
3 you've been referring to that was prepared by
4 the ops folks included more than just the
5 securities that were transferred from the
6 September 18th repo; is that right?

7 A. Right.

8 Q. Okay. And then so did it
9 include -- I believe we've previously
10 discussed unencumbered assets that were
11 transferred to Barclays. Was that included on
12 that successor list, do you know?

13 A. Yes. Yes.

14 Q. And does the number 1.9 billion in
15 securities ring a bell with you in that
16 regard?

17 A. Yes. It does. But unfortunately
18 it's not -- I believe -- what it means to me
19 is the number that was suggested for the
20 eventual total amount of unencumbered
21 securities that Barclays might receive.

22 Q. Oh, okay.

23 And Barclays didn't receive it?

24 A. Not to my knowledge.

25 Q. Are you saying they received some

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<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 but not all?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And -- but that suggested</p> <p>5 number, is that the difference -- is the</p> <p>6 inclusion of that pool of securities the</p> <p>7 difference between Master List, Exhibit 351B,</p> <p>8 and the successor list you've been talking</p> <p>9 about?</p> <p>10 A. No. The successor list I don't</p> <p>11 think included all of the 1.9 billion. It</p> <p>12 was -- you know, if I received the successor</p> <p>13 list on Saturday it only included anything</p> <p>14 that we would have received that Friday.</p> <p>15 Q. Okay. So it was a report in time</p> <p>16 as to what Barclays had actually received by</p> <p>17 that Saturday.</p> <p>18 A. Exactly.</p> <p>19 Q. Okay. And were there subsequent</p> <p>20 versions of that list developed later in the</p> <p>21 week or later in the month?</p> <p>22 A. We kept adding securities to that</p> <p>23 list as we received them.</p> <p>24 Q. Okay. So that list was meant to</p> <p>25 embody the securities that actually made it to</p>	<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 Barclays. Not necessarily what might have</p> <p>3 encompassed a 1.9 list of unencumbered assets?</p> <p>4 A. No. Yeah, that's exactly right.</p> <p>5 Q. Okay. Okay.</p> <p>6 All right. So we were talking</p> <p>7 about Schedule A, am I correct to say that</p> <p>8 this list, 351B, became superseded and no</p> <p>9 longer useful in the analysis leading to the</p> <p>10 development of Schedule A?</p> <p>11 A. Yes.</p> <p>12 Q. But that successor list you're</p> <p>13 talking about might have been involved in that</p> <p>14 analysis?</p> <p>15 A. It was.</p> <p>16 Q. Okay.</p> <p>17 A. It was simply the thing against</p> <p>18 which the Lehman Schedule A list was compared.</p> <p>19 Q. Okay. And were you involved in</p> <p>20 that comparison?</p> <p>21 A. Yes.</p> <p>22 Q. And I previously had asked you</p> <p>23 about a reconciliation process between</p> <p>24 Barclays and Lehman Brothers.</p> <p>25 A. Um-hum.</p>
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<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 Q. Is that -- is your effort involved</p> <p>3 in that process, do you know?</p> <p>4 A. I didn't think of it that way. I</p> <p>5 had a very short time frame to compare what</p> <p>6 Lehman had drafted as the Schedule A to the</p> <p>7 securities that we had received. And my main</p> <p>8 goal was to -- pretty much all I could do was</p> <p>9 determine that they superficially looked</p> <p>10 similar.</p> <p>11 Q. And you were doing that at whose</p> <p>12 request?</p> <p>13 A. Stephen -- Stephen King and</p> <p>14 probably Barclays' legal department.</p> <p>15 Q. Okay. Fair enough. Thank you.</p> <p>16 I want to direct your attention</p> <p>17 back on Exhibit 351B.</p> <p>18 A. Um-hum.</p> <p>19 Q. To the last sentence of the e-mail</p> <p>20 which we talked about earlier about, "Let's</p> <p>21 send to Lehman for marks."</p> <p>22 Do you recall that?</p> <p>23 A. Yes.</p> <p>24 (Deposition Exhibit 353B, document</p> <p>25 bearing production numbers</p>	<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 BCI-EX-(S)-00055573 through</p> <p>3 BCI-EX-(S)-00055574, marked for</p> <p>4 identification as of this date.)</p> <p>5 BY MR. HINE:</p> <p>6 Q. I'm handing you a copy of a</p> <p>7 document marked as Exhibit 353B which is a</p> <p>8 document Bates stamped BCI-EX-(S)-00055573</p> <p>9 through -74.</p> <p>10 A. Um-hum.</p> <p>11 Q. It's an e-mail on which you are a</p> <p>12 c.c. And I want to direct your attention to</p> <p>13 the subject line of the e-mail which says,</p> <p>14 "Barclays' teams are on the way over to meet</p> <p>15 with us on our positions and marks. Obviously</p> <p>16 critical."</p> <p>17 Do you see that?</p> <p>18 A. Um-hum.</p> <p>19 Q. And this is --</p> <p>20 MR. STERN: Take your time to read</p> <p>21 the whole document.</p> <p>22 Q. Sure.</p> <p>23 A. I see that.</p> <p>24 (Document review.)</p> <p>25 A. Okay.</p>

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Q. Do you recall this e-mail?

A. Not in great detail, but, yes.

Q. Well, my question is do you recall any meetings on that Friday between the Barclays team -- or I guess the Barclays team was on their way over to the Lehman facility.

Do you recall that at all on that Friday?

A. Well, I wasn't involved in any of those meetings. I was just privy to e-mails like this that suggested those were happening.

Q. Okay. Do you have any understanding what took place at those meetings?

MR. STERN: I guess -- I don't mind you asking if this process reflected in 353B relates to the process referenced in 351B.

MR. HINE: Well, the notice says --

MR. STERN: Well, the notice refers to the process referenced in those documents.

MR. HINE: The marking process

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that took place on Friday.

MR. STERN: So what I'm -- and as referenced in those documents. So what I'm saying is I don't have a problem if you ask him what -- whether the 353B relates to the process referenced in 351B.

MR. HINE: Okay. Well, that's what I'm trying to do.

MR. STERN: Well, I don't know that that's your question.

MR. HINE: Let me rephrase the question, Mr. Yang.

BY MR. HINE:

Q. Do you have any understanding of a marking process that took place on Friday, the 19th?

A. I should -- I think the thing to focus on is the time line. At 1:14 we were just struggling to compile the securities that we had received in. I knew that during the day Friday traders at Barclays were talking to traders at Lehman. The problem is nobody else had this list of securities. So I should --

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so the short -- so really I think this is a huge generalization but in general the conversations that were happening with Barclays' traders getting Lehman's traders' impressions on positions -- on positions that had no particular relationship to the list of securities that we actually got.

Q. Were you involved in those conversations?

A. No. I just knew that they were happening.

Q. And what did you understand was taking place in that regard?

A. I don't recall exactly what positions they were talking about. I was focused on the positions we actually received.

Q. Okay. Let me just -- I just want to try to distinguish between these two documents. I think when you mentioned 1:14 p.m. you were referring to the time for the Exhibit 341B e-mail?

A. Right. And we were still trying to get our hands around what positions we had received.

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Q. Okay. And in that e-mail it says, "Let's send to Lehman for marks," right?

A. Um-hum.

Q. What did you understand that to involve?

A. The idea was that we -- so we did know that there were ongoing conversations between Barclays and Lehman traders about marks on positions in general.

So one idea that we had was it would not hurt to ask -- to send this to people at Lehman and have them try to mark this list of positions as well.

Q. All right. So you were going to send this list to Lehman in the hopes that it somehow would assist or get involved in that ongoing discussion between the traders that you talked about?

A. Rather the opposite. Hoping that the Lehman traders would be able to assist us or at least, you know, give us one more reference point on this list of securities.

Q. And when you say "this list" you're talking about 351B.

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A. Right. And -- or conceptually, rather, the securities that we had received on Thursday, September 18th.

Q. All right. So now is that effort, the sending it over to Lehman to get their assistance as you just described, is that different from a marking process that was taking place on the Friday between Lehman and Barclays?

A. I think so. I don't know what marking process means, per se.

Q. Okay.

A. In a certain sense I don't know what positions these traders were talking about.

Q. Okay.

A. So we were the only people who knew -- we were the only traders at Barclays who had possession of a list of the positions we actually got.

Q. Well, okay. I think I understand. When you talked about these traders I believe you pointed to Exhibit --

A. 353B.

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Q. -- 353B.

Is Mr. Martin a trader?

A. Yes, he is.

Q. Okay. And so Mr. Martin is sending you the e-mail -- or copying you the e-mail in 353B why?

A. To let me know who on the Barclays side was -- which traders were talking to each other.

Q. Okay. So you were involved in that process?

A. It was helpful for me to know since I was the sort of -- I was tasked with coordinating the process of eventually getting marks on -- or eventually evaluating and processing the securities that we were actually receiving.

Q. Okay. So in connection with the -- and I want to talk about the e-mail on 353B where it says --

MR. STERN: Well, I guess --

MR. HINE: Let me just ask my question, Jack.

MR. STERN: No, no, no. Because I

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think this goes to the scope of the deposition. Again, I don't know that you've asked with respect to 351B if the list was sent to Lehman for marks and if Lehman provided those marks. I mean, it seems to me that is within the scope of the deposition.

MR. HINE: I did ask that and he answered that earlier.

MR. STERN: Oh. So if you've asked that and it's been answered then I don't know --

MR. HINE: That process is definitely related to the marking process that's going on between the traders.

MR. STERN: And you've established that?

MR. HINE: Yes. He just testified about that.

MR. STERN: I don't know about that.

MR. HINE: Well, then, you can review the transcript but I'm going to

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ask him about this e-mail which is marked as 353B.

MR. STERN: So let me hear your question.

MR. HINE: All right.

BY MR. HINE:

Q. Do you see the e-mail where Mr. Martin copies you on February 19th?

A. Um-hum.

Q. Do you see that e-mail, Mr. Yang?

A. Yeah.

Q. Well, first of all, half way down the e-mail it refers to someone named -- I believe it's someone named Kashik.

Do you see that?

A. I do.

Q. Do you know who that is?

A. The name's familiar but I don't recall what role he had.

Q. Do you know if he's a Barclays employee or a Lehman employee?

A. He was a Lehman employee. I believe he's one of the addressees in the e-mail from Ian Lowitt.

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<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 Q. I see. Oh, you're right. Okay.</p> <p>3 So just to lead up to the</p> <p>4 question, Mr. King asks, "I assume you're</p> <p>5 talking to Kashik."</p> <p>6 Do you see that?</p> <p>7 A. Um-hum.</p> <p>8 Q. And then Mr. Martin's e-mail is a</p> <p>9 response to that and he talks about some</p> <p>10 conversations he had with the derivative and</p> <p>11 CMO guys.</p> <p>12 Do you know who that is?</p> <p>13 A. I don't exactly. He would have</p> <p>14 been referring in general to certain groups of</p> <p>15 Lehman traders.</p> <p>16 Q. Okay. So those are Lehman guys.</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And then he continues, "The</p> <p>19 derivative guy said a lot of positions did</p> <p>20 indeed look like repo ones in the file I</p> <p>21 sent."</p> <p>22 Do you see that?</p> <p>23 A. I do see that.</p> <p>24 Q. Do you know what that's referring</p> <p>25 to?</p>	<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't know what file David would</p> <p>3 have been referring to. Although I can say</p> <p>4 that it would not have been an extract from my</p> <p>5 master list.</p> <p>6 Q. Okay. Fair enough.</p> <p>7 MR. STERN: That is 351B.</p> <p>8 THE WITNESS: 351B.</p> <p>9 Q. All right. Then it continues,</p> <p>10 "Told them to mark them consistent with his</p> <p>11 inventory. Appeared he got the message from</p> <p>12 above to remark positions."</p> <p>13 Do you see that?</p> <p>14 A. Um-hum, yeah.</p> <p>15 Q. Do you know what that's referring</p> <p>16 to?</p> <p>17 A. No. The first -- well, let me be</p> <p>18 specific. The first clause I would take to</p> <p>19 read that David's asking for his impressions</p> <p>20 on certain positions. He's asking him to mark</p> <p>21 them as he would his own inventory.</p> <p>22 The second part I don't understand</p> <p>23 what's being said.</p> <p>24 Q. Okay. So I'm just trying to</p> <p>25 understand what you said. The first clause</p>
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<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 where he talks about mark them consistent with</p> <p>3 his inventory --</p> <p>4 A. Um-hum.</p> <p>5 Q. -- "his" meaning the trader at</p> <p>6 Lehman?</p> <p>7 A. I think so.</p> <p>8 Q. So you understand this to be Mr.</p> <p>9 Martin saying that he told the derivative guy</p> <p>10 at Lehman, whoever that is, to mark his</p> <p>11 position consistent with how they mark their</p> <p>12 own inventory?</p> <p>13 MR. STERN: Objection to the form.</p> <p>14 Don't speculate.</p> <p>15 A. I don't -- I don't know.</p> <p>16 Q. Okay. Do you have any</p> <p>17 understanding of what he was discussing with</p> <p>18 this guy?</p> <p>19 MR. STERN: Objection to the form.</p> <p>20 A. No, I don't.</p> <p>21 Q. Do you have any understanding of</p> <p>22 what -- you talked earlier about a process</p> <p>23 between the traders going on at -- between</p> <p>24 Lehman and Barclays on this Friday.</p> <p>25 Do you have an understanding of</p>	<p>1 J. YANG - HIGHLY CONFIDENTIAL</p> <p>2 what actually -- what they were discussing?</p> <p>3 A. No. It's not clear to me.</p> <p>4 Q. Do you have any general</p> <p>5 understanding of what they were discussing?</p> <p>6 MR. STERN: Objection to the form.</p> <p>7 Don't speculate.</p> <p>8 A. Yeah. The general question.</p> <p>9 Like, I mean -- if by general understanding</p> <p>10 you mean they were talking about positions, I</p> <p>11 assume so. But I keep saying I don't know</p> <p>12 what positions they were talking about because</p> <p>13 I was the only one who had a list of</p> <p>14 positions.</p> <p>15 Q. Okay. They were talking about how</p> <p>16 to price different positions?</p> <p>17 MR. STERN: Objection.</p> <p>18 A. Possibly. I don't know.</p> <p>19 Q. Or -- okay.</p> <p>20 Here's my -- the basis for my</p> <p>21 question, Mr. Yang. You've been designated as</p> <p>22 a 30(b)(6) witness about a process -- a</p> <p>23 marking process taking place on that Friday.</p> <p>24 MR. STERN: No, no, no.</p> <p>25 MR. HINE: Just let me ask the</p>

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question, Jack.

MR. STERN: No, you're misquoting the notice. It says the marking process to take place the afternoon of Friday, September 19th, 2008, referenced in BCI 0087 and BCI-EX-0012161. 12161 you've marked. You've marked 0087 as 351B. And 351B says, "If you guys are comfortable with this list then let's send to Lehman for marks."

That is the scope of this deposition. You've already asked about that and you've gotten answers so I don't know what your speech is about.

MR. HINE: That process is related to the discussions between the traders and I just want to ask a question to --

MR. STERN: No, no, no, no. I don't think that that's established.

MR. HINE: Jack, fine. You have your objection. Here's my question.

MR. STERN: I not only have my objection but I'm going to instruct him not to answer to the extent it goes

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beyond the scope.

MR. HINE: You haven't even heard my question.

MR. STERN: I'm just telling you.

MR. HINE: Can you just hear my question before you instruct him not to answer?

MR. STERN: I'm waiting. I'm waiting. Go ahead. Ask your question.

BY MR. HINE:

Q. You've talked about some discussions between the traders going on that Friday between Lehman and Barclays folks, correct?

MR. STERN: Objection. Objection.

MR. HINE: I'm just trying to --

MR. STERN: Look, he told you he didn't -- you have the transcript saying he didn't know --

MR. HINE: Jack, can I ask the question before you coach him anymore.

MR. STERN: So I don't know why you're trying to get the witness to speculate.

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MR. HINE: I want him to say whether he has any understanding --

MR. STERN: You want him to say what you want him to say but he's told you he doesn't know. He doesn't know.

MR. HINE: Let me ask the question, I'll get him to say that, and we'll move on.

BY MR. HINE:

Q. Do you know what was being discussed between the Barclays and Lehman traders on Friday that afternoon of the 19th?

MR. STERN: Objection. Asked and answered.

A. No.

Q. No.

A. No.

MR. STERN: Are we done?

Q. Do you know anything further than what you've just told me about a marking process that took place on Friday, September 19th?

MR. STERN: Objection. You can answer if you know anything further

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about the process referenced in 351B.

THE WITNESS: Um-hum.

Q. Now that your counsel has coached you do you have an answer?

MR. STERN: You can answer that question. You can answer the question if you know anything further about the process that's referenced in 351B.

A. Nothing that we haven't discussed already.

Q. Do you have any knowledge of any marking process on the afternoon of Friday, the 19th, beyond what was referenced in 351B?

A. No.

MR. HINE: Fair enough. I'm done because basically -- and I want to state again I think you've unduly restricted the scope of this deposition but given those restrictions you've placed I'm done. But I think Hughes Hubbard might have a question or too.

MR. STERN: Okay. Well, we can agree to disagree.

MR. HINE: Fine.